JUSTICE

ACTUALITÉS REPORT

ume 27 No. / Nº 4
L •• AUTOMNE 2012

NADIAN CRIMINAL JUSTICE ASSOCIATION •• ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

JUSTICE
ACTUALITÉS REPORT

Volume 27 No. / N° 4

The **JUSTICE REPORT** contains information of value to Association readers and the public interested in matters related to the administration of justice in Canada. Opinions expressed in this publication do not necessarily reflect the Association's views, but are included to encourage reflection and action on the criminal justice system throughout Canada. For more information on the activities of the CCJA, please contact: •• L'**ACTUALITÉS-JUSTICE** renferme des renseignements utiles aux lecteurs de l'Association et au public qui s'intéressent aux questions relatives à l'administration de la justice au Canada. Les opinions qui sont exprimées ne reflètent pas nécessairement les vues de l'Association, mais y figurent afin d'encourager à réfléchir et à agir sur la justice pénale dans tout le Canada. Pour obtenir de plus amples renseignements sur les activités de l'Association, veuillez communiquer avec :

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ISSN: 0823-9436

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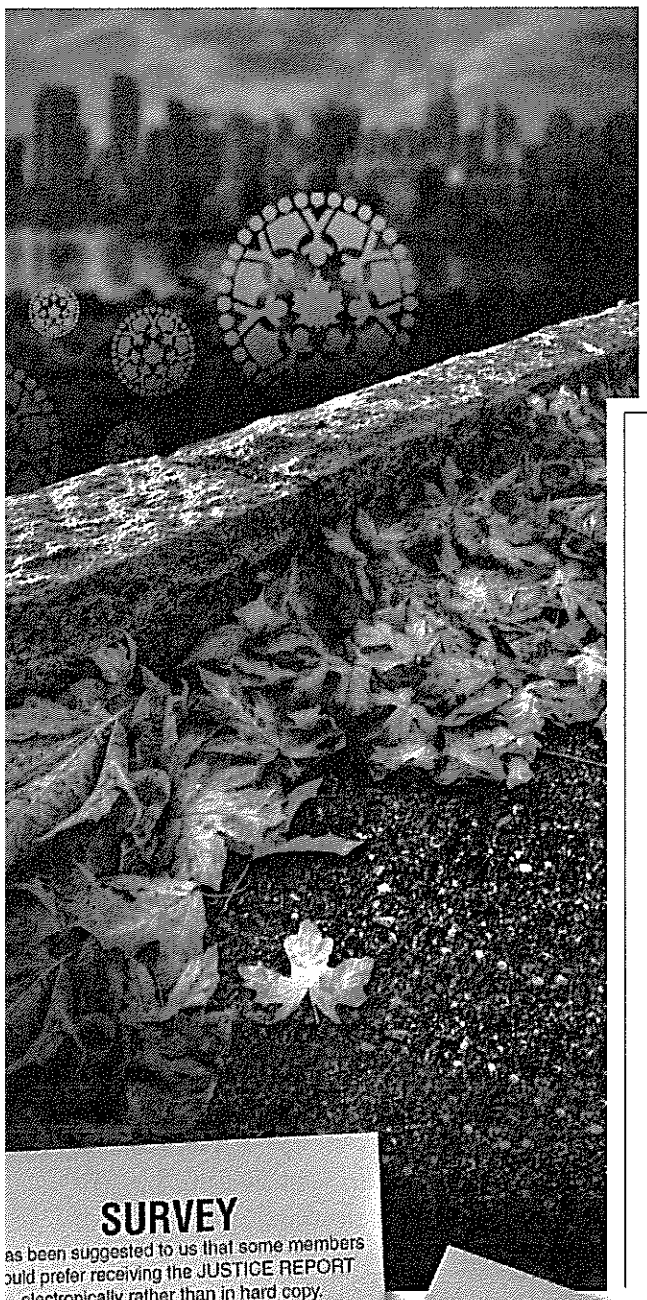
Editor / Rédactrice : Nancy Wright



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SURVEY

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EDITORIAL

ENGAGING THE PERSPECTIVES OF STUDENTS

BY ROLAND LAHAYE
Associate Professor, Mount Royal University | President of the Canadian Criminal Justice Association

"*The Student Space*" by the CCJA offers students of criminal justice and criminology the opportunity to voice their opinions...

The advent of a vehicle for student comment and contribution to perspectives on the Canadian Criminal Justice system is upon us and we at the CCJA are excited about that very prospect. For some time now we have been looking for an "input venue" for the up-and-coming generation of criminal justice professionals – those who will take the reins of many of our criminal justice operations in the coming years.

The Student Space will be just that, a venue for student input and commentary on a wide range of social justice issues, concerns and progressive points of view. In this regard, the CCJA anticipates a Canada-wide contribution from the vast and varied array of educational institutions involved in the teaching of criminal justice and the related field of criminology. The students of these educational centers will be leading the way with their contributions. This may create "friendly competition" between the various criminal justice/ criminology departments and contribute to the evolution of justice ideas and initiatives that serve the best interests of the Canadian community at large.

A trial run of ***The Student Space*** has already been made, in the summer volume of the *Justice Report* (No. 27-3), and has drawn recognition and praise from a former judge for the student contribution. That article, entitled "*The Americanization of Canadian Corrections*", Part I, provides a critical analysis of Bill C-10 and concludes in this volume with Part II. The author is a 4th year student in the Bachelor of Arts, Honors in Sociology program at Mount Royal University, Calgary. Her passion and interest in this topical issue are compelling, and the quality of her work outstanding. This is exactly what we want ***The Student Space*** to facilitate, foster, and showcase.

The formal introduction of ***The Student Space*** in this *Justice Report* includes information regarding general guidelines for student submissions and the section presents a number of student articles. It is our intention to 'keep the doors of encouragement' as wide open as possible and challenge students from across Canada to get involved in the issues of criminal justice.

These are challenging times and the evolution of a "just society" is a never-ending generational phenomenon. It is time for our students to take the reins and push for just outcomes rather than feeling 'academically detached' from the real world of criminal justice and having no opportunity for input. ***The Student Space*** is that opportunity!

This new space in the *Justice Report*, reserved for students, will also garner a unique spot in our new website, which is due to be on board early in the New Year. This Web-aspect of ***The Student Space*** will further facilitate an expanded forum for discussion, contribution and the evolution of progressive criminal justice. Implicit in this initiative is our desire that more and more students join our association and become active in the day-to-day decision making of this very historical institution, which has been pursuing justice in Canada since 1919! To be effective, ideas must be combined with progressive action and students need to become involved in this process. Membership in CCJA offers just that.

The Student Space has now been set in motion and over the next few months will be expanded, extended to the CCJA website, and honed to perfection. At no time have the opportunities to hear what students have to say been any better or more important. There is an evolution of justice occurring in which all citizens need to engage, but none more so than students of criminal justice and criminology. You have the responsibility to do so, and now you also have the means. ***The Student Space*** has the potential to impact the thinking of those responsible for criminal justice legislation and policy in Canada.

Come on students! It's your time to advocate for social justice reform.

ÉDITORIAL

LA MISE À CONTRIBUTION DE PERSPECTIVES ÉTUDIANTES

PAR ROLAND LAHAYE
Professeur agrégé, Mount Royal University | Président de l'Association canadienne de justice pénale

En créant *L'Espace étudiant*, l'ACJP offre aux étudiants en justice pénale et en criminologie une occasion de faire valoir leurs opinions...

Nous, de l'ACJP, sommes enthousiasmés par la création d'un espace où des étudiants auront l'occasion de s'exprimer et de contribuer diverses perspectives relatives au système de justice pénale canadien. Depuis un bon moment déjà nous cherchions un lieu d'expression pour la génération montante de professionnels de la justice pénale – ceux et celles qui prendront la relève dans bon nombre de nos entreprises de justice pénale au cours des prochaines années.

C'est fait. *L'Espace étudiant* comportera des contributions et des commentaires d'étudiants, des préoccupations et des points de vue progressistes sur toute une gamme d'enjeux en justice pénale. Ainsi, l'ACJP s'attend à recevoir des soumissions de tout le pays et d'un éventail large et varié d'établissements d'enseignement offrant des cours de justice pénale et de criminologie. Les étudiants de ces établissements ouvriront la voie dans ce domaine par leurs textes. Cela pourrait donner lieu à une saine compétition entre les divers programmes de justice pénale et de criminologie, en plus de contribuer à l'évolution des idées et à des initiatives qui serviront les intérêts supérieurs de la société canadienne dans son ensemble.

L'espace étudiant a déjà été mis à l'essai dans le numéro de l'été d'*Actualités-Justice* (no 27-3). La première partie de l'article *The Americanization of Canadian Corrections*, une analyse critique du projet de loi C-10, a attiré l'attention et les éloges d'un ancien juge. La conclusion de l'article, la partie II, est publiée dans le présent numéro. L'auteure est une étudiante de 4e année au baccalauréat ès arts, avec majeure en sociologie, de l'université Mount Royal de Calgary. Sa passion et son intérêt pour ce sujet d'actualité sont indéniables et la qualité de son travail est exceptionnelle. C'est exactement le genre de travaux que nous souhaitons faciliter, encourager et mettre en lumière dans *L'Espace étudiant.*

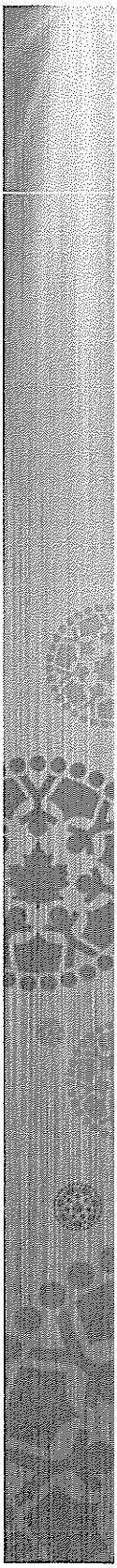
Le lancement formel de *L'Espace étudiant* dans le présent numéro d'*Actualités-Justice* inclut de l'information sur les lignes directrices applicables aux articles soumis par des étudiants et l'espace présente plusieurs articles d'étudiants. Nous entendons continuer d'inciter vigoureusement les étudiants à nous soumettre des articles et nous mettons au défi les étudiants de tout le pays de s'attaquer aux enjeux de justice pénale.

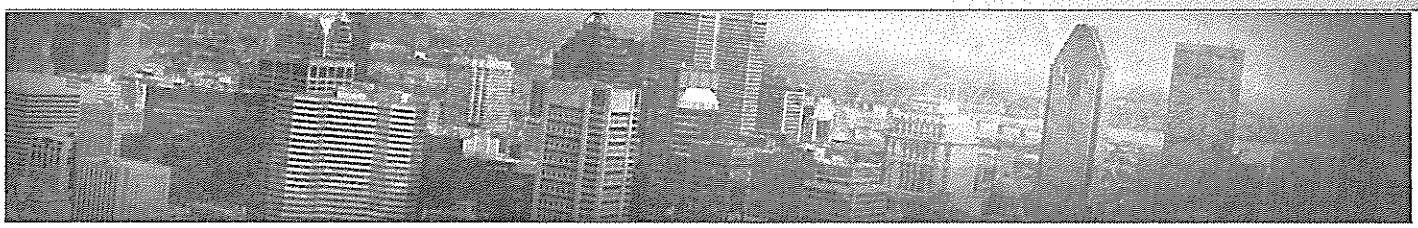
Nous traversons des temps difficiles et la quête d'une société juste demeure une préoccupation constante de toutes les générations. Il est temps que nos étudiants prennent les rênes et militent pour la justice plutôt que de se sentir détachés de la réalité de la justice pénale sans avoir l'occasion d'y contribuer. *L'Espace étudiant* fournit une telle occasion.

Ce nouvel espace d'*Actualités-Justice*, réservé aux étudiants, occupera également une place de choix dans notre nouveau site Web, qui devrait voir le jour au début de la prochaine année. La présence de *L'Espace étudiant* sur le Web offrira un forum de discussion et de contribution encore plus large pour contribuer à l'évolution d'une justice pénale progressiste. Il va sans dire que par cette initiative nous souhaitons qu'un nombre croissant d'étudiants adhèrent à notre Association et participent activement au quotidien à la prise des décisions de cette institution historique, vouée à la justice au Canada depuis 1919. Pour être efficaces, les idées doivent être combinées à une action progressiste et les étudiants se doivent de s'impliquer dans ce processus. Voilà ce que propose l'adhésion à l'ACJP.

L'Espace étudiant est maintenant lancé et, au cours des prochains mois, il sera élargi, étendu au site Web de l'ACJP, mis au point et perfectionné. Jamais les étudiants n'ont-ils eu une meilleure occasion de se faire entendre ou n'ont-ils joui d'une tribune plus importante. La justice est en évolution et tous les citoyens doivent s'y engager, mais personne plus que les étudiants en justice pénale et en criminologie. Il vous incombe de le faire et vous en avez maintenant le moyen. *L'Espace étudiant* pourrait avoir une incidence sur la façon de penser des personnes responsables de lois et des politiques de justice pénale au Canada.

Allons, chers étudiantes et étudiants, c'est maintenant à votre tour de militer pour des réformes en matière de justice sociale.





52 ANS DE "CRIMINOLOGIE ET JUSTICE PÉNALE" À MONTRÉAL

PAR ANDRÉ NORMANDEAU, Ph.D

Criminologue et professeur, Université de Montréal.

Directeur honoraire de l'École de criminologie ainsi que
du Centre international de criminologie comparée de l'Université de Montréal.

Professeur invité annuellement aux États-Unis et en Europe.

Nous avons célébré en 2010 le centenaire de la criminologie en Amérique du Nord. En effet, la criminologie, du moins au Canada et aux États-Unis, est une discipline universitaire créée à l'Université de Chicago il y a un siècle (1910). Par la suite, l'Université de la Californie à Berkeley-San Francisco (1920), l'Université de la Pennsylvanie à Philadelphie (1950), où j'ai fait moi-même mes études supérieures, et l'Université de New York à Albany (1960) ont été les pionnières américaines. L'expansion des années 70 à l'an 2012 a été phénoménale. Présentement, 25 universités américaines offrent le doctorat en criminologie, 110 une maîtrise et plus de 225 un baccalauréat ("bachelor"). Au Canada, 4 universités offrent le doctorat, 9 la maîtrise et 12 le baccalauréat. Or, voici que la criminologie au Canada a célébré également en 2010 un anniversaire, soit le cinquantième anniversaire de sa fondation.

En effet, l'École de criminologie de l'Université de Montréal a été créée en 1960 par le Professeur Denis Szabo, d'origine hongroise, diplômé de l'Université de Louvain en Belgique. L'Université de Montréal, l'université francophone la plus importante en Amérique du Nord (60,000 étudiants), est depuis ce temps l'une des quatre principales universités canadiennes (avec l'Université de Toronto -1963+, celle d'Ottawa -1968+ et celle de Simon Fraser à Vancouver -1974+) qui offrent un programme complet (doctorat, maîtrise et baccalauréat) de criminologie.

CONSENSUS NORD-AMÉRICAIN SUR LA DÉFINITION DE LA CRIMINOLOGIE

Contrairement à la France et à plusieurs autres pays européens, la définition de la criminologie au Canada et aux États-Unis est relativement stable depuis un siècle. Un consensus nord-américain existe à ce sujet. Il pourrait être défini comme ceci: La criminologie "est une discipline qui étudie le phénomène criminel" (la criminalité, le crime, le criminel et la victime), ainsi que les organisations liées à la police, au tribunal, à la prison et aux services d'aide aux victimes d'actes criminels. Autant dans le domaine des jeunes délinquants que des criminels adultes. En prolongement du droit pénal (le "code criminel" et le "code de procédure pénal" au Canada). L'objectif étant à la fois la prévention et la répression du crime.

ÉTUDE INTERDISCIPLINAIRE...

Cette étude est interdisciplinaire et elle est accomplie sous l'éclairage principal du droit pénal, de la sociologie et de la psychologie, et, à l'occasion, de d'autres approches complémentaires, telles la science politique, l'anthropologie, le service social, la biologie et la médecine (psychiatrie), en particulier" (Normandeau, 2012).

UNE VÉRITABLE PROFESSION EN AMÉRIQUE DU NORD DEPUIS LE MILIEU DU XX^{e} SIÈCLE

De plus, depuis le milieu du XX^{e} siècle, la criminologie en Amérique du Nord est devenue une véritable "profession". Un diplôme en criminologie débouche sur le marché du travail. Les secteurs dans lesquels travaillent les criminologues sont étonnamment diversifiés et nombreux: probation et travail communautaire, sursis et mise à l'épreuve, surveillance électronique, prison, maison de transition et libération conditionnelle, centres de protection de l'enfance et de la jeunesse, centres d'accueil et de réadaptation pour les jeunes délinquants ("prison pour les mineurs"), centres d'aide pour les toxicomanes, centres d'aide pour les femmes et les enfants

violentés ainsi que pour l'ensemble des victimes d'actes criminels, services de police, prévention du crime, ministères de la Sécurité publique au gouvernement fédéral à Ottawa ainsi que dans chacune des provinces et territoires canadiens, de la Justice (fédéral et provincial), de la Santé et des Services sociaux (fédéral et provincial). Dans tous ces milieux, les criminologues déploient une activité aux facettes multiples: l'intervention clinique, la gestion de programmes, l'animation, la consultation, la recherche, l'enseignement.

À TITRE D'EXEMPLE: LA LISTE DES COURS — L'UNIVERSITÉ DE MONTRÉAL 2012-13

La liste des cours offerts dans les Écoles de criminologie est d'ailleurs indicative de ces intérêts. En prenant, à titre d'exemple, la liste de l'Université de Montréal, voici les principaux chapitres de la criminologie tels qu'enseignés en 2012-2013:

- Le code pénal et le code de procédure pénale;
- Les méthodes de recherche en sciences sociales et en criminologie;
- Les tendances de la criminalité dans le temps et l'espace;
- Les configurations ("patterns") des différents crimes et délits;
- Les explications (étiologie) de la criminalité: biologiques, psychologiques-psychiatriques, socio-économiques;
- La prévention de la criminalité;
- La police publique et la sécurité privée;
- Les tribunaux et le "sentencing";
- Les mesures pénales communautaires (non carcérales): de la probation à la libération conditionnelle;
- La prison;
- Les femmes, le crime et la justice pénale;
- Les mineurs, le crime et la justice pénale;
- La victimologie;
- La sociologie, la science politique et le système pénal;
- La psychologie, la psychiatrie et le traitement du délinquant et du criminel ("criminologie clinique");
- L'administration de la justice pénale et les politiques pénales.

STAGES PRATIQUES

Mentionnons que ces enseignements sont accompagnés de stages pratiques dans tous les milieux de la criminologie appliquée, que ce soit la police, le tribunal, la prison, les centres d'aide pour les ex-délinquants ou les victimes. Par exemple, à Montréal, sur quatre ou cinq ans d'études en criminologie, l'étudiant doit descendre "sur le terrain pratique" l'équivalent de près d'un an: il peut par exemple faire un stage pratique d'un mois dans un service de police, puis de trois mois en prison, puis quelques mois dans un centre d'aide pour femmes et enfants violentés.

Sans traiter de tous les secteurs de travail du criminologue, mais compte tenu que près de 50 pour cent des criminologues nord-américains travaillent dans le champ des prisons et des mesures communautaires: **Que font-ils ?**

La détention

Dans les milieux de détention, les criminologues ont la responsabilité d'évaluer les délinquants au début de leur séjour. Ils font un bilan de leur histoire sociale et familiale, ils analysent leurs conduites criminelles (les motifs, les circonstances, la gravité des délits et la nature des récidives). L'évaluation permettra d'orienter les détenus vers tel ou tel établissement carcéral et vers des programmes appropriés à leurs besoins, sans pour autant menacer la sécurité du public : formation académique, travail, thérapie. Certaines prisons, par exemple, sont spécialisées en programmes pour les délinquants sexuels ou pour les toxicomanes. Le travail du criminologue en milieu carcéral comporte le soutien aux détenus pour les aider à purger une sentence dans la perspective d'un retour éventuel dans la société. Les criminologues auront également à évaluer la capacité d'un détenu à bien fonctionner lors d'une libération conditionnelle.

La libération conditionnelle et les maisons de transition

Les criminologues agissent aussi auprès de ceux qui bénéficient de programmes de mise en liberté sous condition après avoir purgé une partie de leur sentence. Ils sont également présents dans les maisons de transition qui accueillent les ex-détenus dans le cadre d'absence temporaire, de programmes de semi-liberté ou de libération conditionnelle totale. Leur rôle est d'assister et de surveiller l'ex-détenu dans ses efforts de réinsertion sociale. Les criminologues doivent aussi veiller à ce que les personnes sous leur surveillance se conforment aux lois et qu'elles s'acquittent de leurs engagements. Lorsque la personne en liberté surveillée risque de récidiver, ne respecte pas ses engagements, ou commet de nouveaux délits, le criminologue doit agir dans l'intérêt de la société. Il peut alors être appelé à recommander des mesures pouvant aller jusqu'à la réincarcération.

Les mesures pénales communautaires (non-carcérales)

Les criminologues travaillent également auprès de contrevenants adultes condamnés à des sentences dites "communautaires", i.e. autres que la détention, notamment dans le cadre de mesures probatoires, de travaux communautaires, de sursis avec mise à l'épreuve, de la surveillance électronique, de la libération conditionnelle. Ces peines sont purgées dans la communauté, mais elles n'en sont pas moins assorties de conditions à respecter. On peut donc y retrouver, par exemple, l'obligation d'aviser son agent lors d'un déménagement, de se rapporter régulièrement au service de police, ou encore de suivre un traitement pour sa toxicomanie ou ses problèmes de nature sexuelle. Dans le cas des travaux communautaires, le contrevenant aura à effectuer du travail bénévole dans divers organismes et le criminologue doit s'assurer qu'il le fasse sérieusement (par exemple, dans un centre pour handicapés physiques ou dans un service de loisirs pour les jeunes).

La gestion

Ayant acquis de l'expérience, de nombreux criminologues en viennent à occuper des postes de gestion et de responsabilité. Ils deviennent directeur de prison, directeur d'un service de probation ou de libération conditionnelle, d'une maison de transition, du programme de surveillance électronique. Outre les tâches administratives habituelles d'un gestionnaire, comme le budget, le recrutement du personnel, le contrôle de la qualité des services professionnels à la clientèle, le criminologue-gestionnaire doit garder à l'esprit les préoccupations qui lui sont propres: protection de la société, justice, réinsertion sociale, humanisation des services.

L'on retrouve également tous ces rôles du criminologue dans le secteur des jeunes délinquants, avec adaptation, évidemment.

C'est donc dans un tel contexte que la criminologie canadienne évolue en ce moment. Le défi est grand, en particulier pour une université francophone, celle de Montréal, noyée dans une mer anglophone: 315 millions d'Américains, 36 millions de Canadiens, dont 28 millions de Canadiens anglais et 8 millions de Canadiens français.

CONCLUSION

L'École de criminologie de l'Université de Montréal reçoit annuellement plus de 500 étudiants, dont 400 environ au baccalauréat, 75 à la maîtrise et 25 au doctorat. Le corps professoral est composé de 25 professeurs à temps plein, d'une vingtaine (20) de chargés de cours à temps partiel, et d'une trentaine (30) de praticiens (chargés de formation pratique et d'encadrement des étudiants en stage). Au total, depuis 1960, plus de 5000 étudiants ont reçu leurs diplômes en criminologie à Montréal.

Tout compte fait, lorsque nous regardons l'histoire de la criminologie à Montréal depuis 1960 (et ailleurs au Canada, à mon avis), sans flatterie inutile mais sans fausse modestie non plus, nous pouvons affirmer que le bilan est très positif au chapitre de l'évolution des opinions, des attitudes et des mentalités de la population par rapport au phénomène criminel. La présence des criminologues a permis d'élargir "le corridor de la tolérance" et de contribuer au développement d'une "profession de criminologue" dûment reconnue par les autorités publiques. Une profession qui a trouvé, à mon avis, un "juste équilibre" entre la protection de la société et la réinsertion sociale du délinquant. Une profession respectée par les ministres de la Justice et de la Sécurité publique, les autres professionnels de la justice pénale ... et les journalistes. En effet, les criminologues nord-américains sont souvent interviewés par des journalistes de renom qui ont confiance aux opinions professionnelles de ces derniers. L'opinion publique en a été marquée, que ce soit depuis 1910 à Chicago ou depuis 1960 à Montréal, et évidemment ailleurs sur tout le continent.

Une pensée du pionnier-fondateur de l'École de criminologie de l'Université de Montréal m'a toujours fasciné par son à propos. Je voudrais la partager avec vous, en guise de conclusion, une pensée valable autant au Québec, au Canada, aux États-Unis et en Europe, il me semble:

Une pensée fascinante du pionnier-fondateur de l'École de criminologie de l'Université de Montréal

"Mêlés à la responsabilité quotidienne de l'administration de la justice, conscients de l'ambiguïté des résultats des recherches scientifiques, comme guides ou inspirateurs de l'action pratique, les criminologues sont passés de l'adolescence à l'âge adulte. Comme bien des adultes, certains se sont soumis à la loi du plus fort, d'autres ont résisté, d'autres encore se sont révoltés ou se sont brisés. Ils subissent, à l'instar de tous les hommes et femmes, les pressions contradictoires où ni la science, ni la profession, ni la morale, ni la politique ne peuvent se substituer au caractère d'une personne et à son courage civique. Et ils n'ont fait ni mieux ni pire que les autres. Mais, évidemment, ils ont perdu la virginité de l'innocence aux yeux des chasseurs de l'image, de la nouveauté, des saints Georges professionnels, toujours à la recherche d'un dragon à occire. De plus, devant les professionnels de la contestation, ils sont même devenus des boucs émissaires rêvés. Être coupable par association, procédé peu glorieux mais combien fréquent, trouve des terrains des plus fertiles si l'on veut aligner ceux qui sont mêlés professionnellement aux gendarmes et aux

voleurs, aux gardiens et à ceux qui sont gardés. Dans le monde dominé par de grandes oppositions manichéennes, les criminologues sont bien mal partis. Il ne faut point s'étonner de les voir traités par la droite comme des fourriers de toutes les subversions qui engloutiront la famille, le travail et la patrie, et par la gauche comme des laquais de toutes les oppressions, des agents de tous les contrôles et des éteignoirs de toutes les libertés. La réussite de la criminologie fut, paradoxalement, aussi sa Némésis ! Nous voulions qu'elle serve. Eh bien ! elle sert, mais pas toujours pour les objectifs et selon la manière que nous aurions souhaités. Comme toutes les institutions et les professions, la criminologie au sein de l'administration de la justice participe à la rigidité, à l'esprit de composition, de démission, de résignation qui peut même, parfois, devenir de la prostitution. Quel enseignement nos jeunes camarades doivent-ils tirer de ce qui précède ? Que ceux qui les ont précédés se sont trompés et ont trompé les autres ? Ce n'est sûrement pas cette conclusion que nous tirons de l'expérience que nous avons vécue profondément à Montréal, sans avoir jamais été mis en contradiction avec nous-mêmes. Nous avons tout simplement subi la loi de la maturation commune à tous les hommes et femmes et à toutes les institutions. Nous n'avons pas voulu garder à jamais nos culottes courtes comme ceux qui se sont spécialisés, à l'instar des adolescents, à toujours poser des questions, à toujours définir de nouvelles situations, sans jamais prendre la peine de chercher eux-mêmes des réponses. Nous les cherchions, ces réponses ! Certaines étaient favorables à nos hypothèses, d'autres ne l'étaient pas. La plupart étaient comme les réponses de l'oracle de Delphes: chacun y mettait ce qu'il voulait bien. Et nous, nous nous trouvons placés, comme criminologues, praticiens, enseignants ou chercheurs, devant nos responsabilités d'hommes et de femmes. Il n'y a pas de bonne ou de mauvaise criminologie, comme il n'y a pas de bonne ou de mauvaise médecine. Il y a de bons criminologues et des mauvais, comme il y a de bons médecins et les autres, des hommes et des femmes courageux ou des poltrons, des novateurs et des suiveurs, des intègres et des corrompus, et hélas ! des hommes et des femmes intelligents et ceux qui ne le sont pas... (Szabo, 1978, page 289-290).

Le prochain siècle, déjà en marche, sera exigeant pour la criminologie, en Amérique du Nord comme en Europe. Comme l'affirmerait un homme de science célèbre, le Dr Hans Selye, médecin et chercheur d'origine suisse et professeur à l'Université de Montréal jusqu'à son décès dans les années '90, ainsi que le créateur du concept scientifique de "stress", notre siècle est une source de "stress criminologique". Mais le même Selye dit aussi dans un de ses livres populaires, "Stress sans détresse" (1975), que "le travail est une obligation et un devoir et, si on le fait de bon coeur, un plaisir". Le stress ne tue pas s'il est assumé et canalisé. En fait, Selye a créé l'expression "eu-stress", du grec et du latin, qui signifie: un "stress positif".

Je nous souhaite donc tous, aux criminologues (universitaires et praticiens), et, en prolongement de ce numéro spécial de notre magazine ("Actualités-Justice"), aux étudiants actuels et à venir en criminologie à Montréal, Québec, Ottawa, Toronto, Winnipeg, Calgary, Edmonton, Vancouver, et ailleurs au Canada, un tel "eu-stress criminologique" au cours des prochaines années. ••

REFERENCES:

A. Publications des professeurs de l'École de criminologie de l'Université de Montréal sur l'enseignement et la recherche en criminologie au Québec depuis 1960.

1. Bensimon, P. (2009). *Profession - Criminologue / Analyse clinique et relation d'aide en milieu carcéral*. Montréal, Les Éditions Guérin.
2. Casoni, D.; Brunet. L. (2003). *La psychocriminologie*. Montréal : Les Presses de l'Université de Montréal.
3. Criminologie (Québec), une revue thématique publiée deux fois l'an par les Presses de l'Université de Montréal depuis 1968. Note / Plusieurs articles sur l'enseignement et la recherche en criminologie au Québec. Voir en particulier les numéros thématiques sur le sujet de 1977-2 et de 2004-1, ainsi que les numéros spéciaux du 40e anniversaire de la revue (2008-1) et du 50e de l'École (2010-2).
4. Cusson, M. (1994). *Le modèle québécois*, in R. Cario, A.M. Favard et R. Ottenhof, sous la direction, Profession / Criminologue, pages 29-36. Toulouse: Érès.
5. Cusson, M. (2005). *La criminologie*. Paris: Hachette, 4e édition.
6. Fournier, M. (1998). *Entretiens avec Denis Szabo / Fondation et fondements de la criminologie*. Montréal: Éditions Liber.
7. Lafortune, D. (2010). *La criminologie est-elle une profession ?*, in J. Poupart, D. Lafortune et S. Tanner, sous la direction, pages 59-71. Montréal: Les Presses de l'Université de Montréal.
8. LeBlanc, M. (1994). *La criminologie aux États-Unis / Discipline manifeste, formation éclatée, profession latente*, in R. Cario, A.M. Favard et R. Ottenhof, sous la direction, Profession / Criminologue, pages 63-73. Toulouse: Érès.

9. LeBlanc, M.; Cusson, M., sous la direction (2010). *Traité de criminologie empirique*. Montréal: Les Presses de l'Université de Montréal, 4e édition. Voir les trois autres éditions en 1985,1994 et 2003. Chaque édition comporte des articles complètement nouveaux.

10. Leman-Langlois, S. (2007). *La sociocriminologie*. Montréal: Les Presses de l'Université de Montréal.

11. Poupart, J. (2004). *L'institutionnalisation de la criminologie au Québec: une lecture sociohistorique*. Criminologie,1, 71-105.

12. Poupart, J.; Lafortune, D.; Tanner, S., sous la direction (2010). *Questions de criminologie*. Montréal: Les Presses de l'Université de Montréal.

13. Proulx, J. (2006). *Profession / Criminologue*. Montréal: Les Presses de l'Université de Montréal.

14. Szabo, D. (1965). *Criminologie*. Montréal: Les Presses de l'Université de Montréal.

15. Szabo, D. (1978). *Criminologie et politique criminelle*. Paris, Vrin / Montréal, Bellarmin.

16. Wemmers, J. (2003). *La victimologie*. Montréal: Les Presses de l'Université de Montréal.

B. Publications de l'auteur, au cours de la dernière décennie (2000 à 2012), sur l'enseignement et la recherche en criminologie au Québec depuis 1960.

1. Normandeau, A. (2001). *La criminologie au Canada*. Revue de science criminelle et de droit pénal comparé, 4, 901-909. Paris.

2. Normandeau, A. (2002). *La criminologie au Québec: une vision de l'avenir*. Problèmes actuels de science criminelle, 15, 93-126. Aix-Marseille.

3. Normandeau,A. (2003 a). *La criminologie made in Québec-Canada*, in A. Manganas, sous la direction, Droits de l'Homme / Crime et politiques criminelles, pages 961-999. Bruxelles. Éditions Bruylant. Publié également en version grecque.

4. Normandeau, A. (2003 b). *La criminologie aux États-Unis et au Canada: une profession*. Revue de science criminelle et de droit pénal comparé, 4, 907-912. Paris.

5. Normandeau, A. (2003 c). *Une criminologie de langue française en Amérique du Nord / Guide de lecture, 1960-2003*. Revue de science criminelle et de droit pénal comparé, 4, 912-926. Paris.

6. Normandeau, A. (2008). *Le Prix Nobel de criminologie dit le Prix de Stockholm*. Revue de science criminelle et de droit pénal comparé, 4, 1007-1012. Paris.

7. Normandeau, A. (2009). *La criminologie à Montréal, un demi siècle de production scientifique, 1960-2010*. Revue de science criminelle et de droit pénal comparé, 4, 961-971. Paris.

8. Normandeau, A. (2000). *Un guide de lecture en criminologie francophone*, in D. Szabo et M. LeBlanc,sous la direction, Traité de criminologie empirique, 2e édition, pages 385-395. Montréal: Les Presses de l'Université de Montréal.

9. Normandeau, A. (2003 d). *La criminologie québécoise depuis 1990*, in M. LeBlanc, M. Ouimet et D. Szabo, sous la direction, Traité de criminologie empirique, 3 è édition, pages 761-769. Montréal: Les Presses de l'Université de Montréal.

10. Normandeau, A. (2010 a). *50 ans de publications marquantes des professeurs de l'École de criminologie et des chercheurs du Centre international de criminologie comparée de l'Université de Montréal*, in M. LeBlanc et M. Cusson, sous la direction, Traité de criminologie empirique, 4 è édition, pages 443-448. Montréal: Les Presses de l'Université de Montréal.

11. Normandeau, A. (2010 b). *Criminologia la Montreal / O jumatate de secol de producție științifică, 1960-2010*. Legea si viata, 4, 11-18. Revue moldave de criminologie, République de Moldavie.

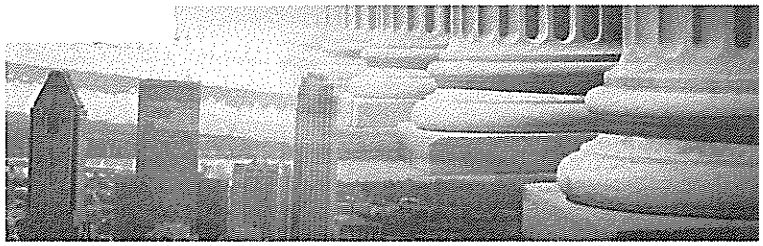
12. Normandeau, A. (2010 c). *Panorama des livres des professeurs et des chercheurs de l'École de criminologie et du Centre international de criminologie comparée de l'Université de Montréal, de 1960 à 2010*. Revue canadienne de criminologie et de justice pénale, 2, 231 et site internet de la revue: www.ccja-acjp.ca <http://www.ccja-acjp.ca/>. Ottawa.

13. Normandeau, A. (2012). *50 ans et plus de criminologie et de pénologie au Québec et au Canada, 1960-2012*. Revue pénitentiaire et de droit pénal, 44, 212-219. Paris.

C. Liste des 15 "autres" publications de l'auteur sur l'enseignement et la recherche en criminologie au Québec, publiées entre les années 1970 et 2000. Sur demande à l'auteur.

In this informative article, Dr. André Normandeau takes a sweeping look at the historical development of criminology and its definition in North America within a framework of education. The interdisciplinary study of criminology at the university level here and in the USA was created at the University of Chicago in 1910. The Université de Montréal was among the first to offer a complete program (1960+) in criminology, along with the University of Toronto (1963+), University of Ottawa (1968+) and Simon Fraser University in Vancouver (1974+). Normandeau reminds us that criminology has been a veritable profession in Canada since the 20th century, that Quebec celebrated 50 years of criminology in 2010 and that a diploma opens the door to numerous and diverse employment opportunities.

The author's conviction is that the field of criminology will continue to be characterized over the present century by what has been termed "un stress positif" (positive stress), an expression created in part from the Latin "eustress" (an excitement felt by people confronted by a demanding situation they feel capable of handling), and extends his wish that this 'eustress' be felt by everyone and imbue all with the motivational excitement to forge ahead confidently and with positive inspirational dedication in the years to come.



BUSINESS AS USUAL...

BY VICKI CHARTRAND, Ph.D

The author is an anti-violence worker formerly having worked at a shelter in Northern British Columbia and now teaches at the University of Ottawa.

I would like to acknowledge the Traditional Custodians of this Land, the Carrier people, and pay my respects to elders both past and present. It is an honour and privilege for me to travel this path.

7:00 a.m. – I open the door to the women's shelter. From the outside, the house looks like a quiet residence possibly housing a large family. As I walk in, it is an altogether different story. The support worker is on the phone and a woman who is barely conscious is sitting on the couch. The worker calls me in to assist. Within minutes the ambulance arrives and the paramedics take over. After a few more minutes, all is quiet in the house. I turn to the worker and we smile at each other. Not because we think what has happened is humourous – far from it. We smile to let each other know that the situation was handled and, for the moment, all is well.

7:15 a.m. – I am now sitting at my desk and I think how ironic it is that I am ultimately working to end my job – to end violence against women and children. For now, however, it is business as usual.

When I say it is 'business', it is not because this is just a job to me. I have been involved with women's issues for 15 years and remain appalled and affected by the accounts of violence and abuse. I also remain humbled by the strength of the women and children whose path I have the privilege to cross and the committed workers who walk alongside them. When I say business, what I am referring to is how violence against women and children has become so commonplace we've had to develop an entire industry to address its effects. In 2010, there were 593 shelters for abused women operating in Canada and between April 1, 2009 and March 31, 2010 there were over 64,500 admissions of women to these shelters (Burczycka & Cotter, 2011). I shudder at these numbers.

I do not argue that men are never abused – because they are. What I do know is that women and children experience violence on such a global and endemic scale that I cannot pretend that violence affects women and children in the same way. In Canada, among the solved murders in 2004, 50% of women were killed by someone with whom they had an intimate relationship compared to 8% of men. On average, 182 women were murdered every year in Canada between 1994 and 2003. The Ontario Native Women's study on violence against women in Aboriginal communities reports that 80% of Aboriginal women and 40% of children are abused and assaulted (Lynn & O'Neill, 1995). Each number has a face. These are our mothers, grandmothers, daughters, sisters, cousins, aunties and friends. Where shelters save lives, they are clearly not enough. This is not a job for shelters, anti-violence workers or women alone — this is a community problem.

7:20 a.m. – I am reviewing the shelter's statistics for the past year. There were approximately 410 women and children housed at our residence, and these numbers do not include the hundreds of drop-ins or crisis calls taken by workers. From July 2009 to August 2009, our numbers nearly doubled, i.e. from housing 27 women to housing 42, showing only an incline. The challenges in supporting women and children are also becoming more complex, from medical needs, housing, transportation, food, clothing, legal services, employment, and financial assistance, to counseling, treatment, and so on. The industry of violence is doing well these days.

7:25 a.m. – As I think about the women in this house, I am also aware how none of these numbers that I write carry a name, a face or a story – for now, it is business as usual... ••

Cet article raconte une demi-heure dans la vie d'une intervenante vouée à contrer la violence. L'utilisation du mot business est un jeu de mots visant à mettre en relief le fait que la violence envers les femmes et les enfants est si répandue que toute une industrie s'est développée pour traiter de ses conséquences. Vicki Chartrand soutient qu'il ne s'agit pas d'un enjeu ne concernant que les refuges, les intervenants luttant contre la violence ou les femmes – il s'agit d'un problème qui interpelle la collectivité dans son ensemble.

COMPARATIVE CRIMINAL JUSTICE: SOMETHING OLD AS SOMETHING NEW

BY JOHN WINTERDYK, Ph.D
Department of Justice Studies, Mount Royal University

CRIME IS OMNIPRESENT

Factually, a review of such sources as the United Nations Office on Drugs and Crime (UNODC) or Nationmsters.com will provide a clear impression that no society is immune to crime - it is just a matter of degree. Some countries, parts of the world, are confronted to a greater or lesser degree with conventional, non-conventional, and transnational crime. Certain types of crime, however, such as human trafficking, are evident in virtually every corner of the world be they countries of origin, countries of transit, or places of destination. Therefore, every country has a formalized criminal justice system (CJS) whose mandate is to ensure the maintenance of 'law and order'. As Martin Duffy recently wrote: criminal justice systems are an inseparable feature of human civilization.

DIVERSITY UNDER ONE UMBRELLA

The French philosopher Jean-Jacques Rousseau (1712-1778) with his notion of the "social contract" articulated that we are innately social creatures who strive to feel a sense of belonging and acceptance within the social/cultural environment in which we live. This is not dissimilar from the more recent work of Hirschi and Gottfredson and their Social-Control Theory (SCT) of crime (circa 1990). They posit attachment (i.e., socialization) and low self-control (i.e., social learning) as key indicators (i.e., risk factors) of criminal activity. Other variations of SCT include Charles Tittle's Control Balance Theory (circa 2004) and, arguably, Peacemaking Criminology (circa 1980s), all of which speak to the importance of creating a sense of interpersonal cohesiveness — but at what cost? For example, historically traceable to one of Socrates students, Aristippus of Cyrene, who suggested that seeking pleasure and avoiding pain is our highest need.

The more contemporary iteration of hedonism can be traced to the work of Jeremy Bentham (1748-1832) and even more recently the work of French philosopher Michel Onfray, who among others has argued that regardless of age, morality, etc., we are human and at best subject to transgressions in the face of greed, temptation, and/or opportunity. Hence, as the esteemed psychologist Karl Menninger commented in the 1970s, societies get the crime they deserve. That is to say, the greater the level of discord in a society, the greater the level of crime. Furthermore, French sociologist Emile Durkheim (1858-1917) noted in his classic work that crime serves a normative function in that it expresses and even reinforces the consensus in society with respect to what is "right and wrong". That is, crime is an expression of a deregulation occurring in society, which means that the rules on how to behave are confused and this leads to deviant behaviour. In such a state, the rules and laws of society no longer have their intended impact.

ALL CRIMINAL JUSTICE SYSTEMS SHARE A COMMON GOAL

Although there is considerable variation in terms of how countries go about the business of maintaining law and order, they all share a common preoccupation – that is, crime control through their respective criminal justice systems. However, there is no universal model of justice. For example, as I have commented elsewhere, there are arguably at least six different models of juvenile justice in use around the world. Likewise, most textbooks identify at least three different models of policing (i.e., traditional, problem solving, and community-oriented). Perhaps the most obvious variation can be found within the legal system, which ties the components of the criminal justice systems together. Legal systems can be divided into four types of legal traditions in the world: civil, common, Islamic, and socialist. Yet, regardless of the variations within law enforcement, the judicial system, or within corrections, borrowing from the 1970s work of the British criminologist Jason Ditton, governments engage in the practice of "controlology". Every country relies on its criminal justice system to uphold the fundamental interests, and arguably vested interests, of its society in a way that will optimize public safety and security within a human rights framework while also reducing, if not controlling, the pervasive effects of (transnational) crime.

Hence, if not already self-evident, crime knows no political boundaries and in a world of ever-increasing mobility, e.g., Canada is host to some 35 million visitors (students, tourists, temporary workers, live-in care givers, etc.) every year, the risk or spread of organized criminal activity across borders has become omnipresent. In a 2001 American article on

transnational crime, Paula Dobriansky describes the globalization of crime as 'explosive'. However, as evidenced by the International Crime Victimization Survey (ICVS), which was last completed with 47 countries in 2000, most crimes today are still largely conventional and traditional in nature, e.g., B&Es, shoplifting, MVT, theft, etc. However, the transnational crime statistics gathered by the UNODC reflect a growing awareness and concern about such international crimes as the rise in youth violence, organized crime, and the transnational crimes of human trafficking, smuggling, money laundering, illegal trade in firearms and other weapons, terrorism, counterfeiting currency, corruption of public officials, etc. Other criminal justice issues that know no borders include certain pragmatic operational and management issues related to the administration of criminal justice. Among other areas of concern, these include prison overcrowding, youth crime, treatment of victims of crime, treatment of women in prisons, models of police structure, etc.

COMPARATIVE CRIMINAL JUSTICE IN CONTEXT

While the campaign for engaging in comparative criminal justice (CCJ) research might appear to be a relatively new phenomena within the general field of criminal justice, the esteemed Italian criminologist David Nelken has argued that, like so much of what we do in criminology and criminal justice, it is not so much new as it is a practice that has received its own special label. And to paraphrase Emile Durkheim's comments on comparative sociology: '"comparative criminal justice is ... criminal justice itself."

Students and sometimes academics new to the field of comparative criminal justice confuse it with comparative criminology. Therefore, like the difference between smuggling and human trafficking – although distinctively different, sometimes victims of smuggling (involving consent of movement vs. a degree of coercion and deceit) become victims of trafficking. Hence, it is worth briefly clarifying the difference. The author of one of the most successful comparative criminal justice textbooks, Philip Reichel, in his most recent edition of Comparative criminal justice systems: A topical approach (2013), points out that comparative criminology, the study of domestic, international, and transnational crime, is "the study of crime as a social phenomenon and social behavior" while comparative criminal justice focuses on "determining how various countries attempt to maintain social order and accomplish justice" (25).

EMERGING COMPARATIVE CRIMINAL JUSTICE IN CANADA

Although there is no Canadian authored textbook on comparative criminal justice, there is no shortage of initiatives by criminal justice agencies/personnel who support and/or engage in CCJ research. For example, Correctional Service of Canada, through its international policy objectives, is "actively involved in contributing to international stability and peace by promoting good governance, the rule of law, respect for human rights and democratic development." Similarly, the Correctional Investigator of Canada, Howard Sapers, has travelled far and wide to explore and discuss other possible options for improving the work he does. In terms of policing, various municipalities have sent members of their force to help educate and maintain law and order in Sudan. Certain Canadian police officers have also served in former Yugoslavia, among other jurisdictions, to help promote peace and stability.

The same is true within the Canadian academic community. Given the limited space for this article, however, it is not possible to even begin to do justice to all the comparative work that has been done, but I offer a few names (and apologize in advance to those who I could not include) — Nick Jones and his specializations in the areas of genocide and restorative justice; Prof. Ray Corrado and his work in the area of juvenile justice; Prof. Darryl Plecas and his work in the area of policing/law enforcement; and, Prof. Irvin Waller and his effort nationally and internationally to change criminal justice policy from crime-control oriented to crime prevention. Waller is also an international champion of victims' rights and support initiatives. The point is, even though there is no Canadian-authored textbook on comparative criminal justice, there is virtually no criminal justice program in the country that does not have one or more faculty members actively engaged in CCJ research.

EMBARKING ON THE COMPARATIVE CRIMINAL JUSTICE RESEARCH ``PATHWAY``

For any student interested into venturing into the field of comparative criminal justice, there are some fundamental facts to be aware of before thinking about what you might want to spend your summer, sabbatical, or time and resources doing!

1. Not all comparative work requires travel, and building a network of colleagues is a very effective alternative.
2. CCJ research should be more meaningful than simply comparing countries or systems because of networks and/or convenience. While it might be interesting to look at the prison

system in Canada and compare it to that of some third world country, one must ask themselves to what end would such inquiry be constructive?

3. There is also a host of more pragmatic issues (which I trust are reasonably self-explanatory) that make the study/carrying out of CCJ a challenge:
   A. Language barriers
   B. Accuracy in the defining, reporting,and recording of data
   C. Availability and reliability of data
   D. Crime statistics are sometimes 'political statements'
   E. Administrative and political hurdles that one might have to face, e.g., some governments are not willing to share any of their statistics
   F. Various structural social features (e.g., technology, extent to which people buy insurance, etc.) affect crime rates
   G. Until fairly recently much of the work/research involving comparative research has been descriptive in nature. While such work can, and usually is interesting, it is limited in terms of its practical/ applied value. As has already been noted, criminal justice systems can be found in every country and CCJ research has observed that crime knows no boundaries and increasingly transcends geo-political borders. What is now urgently needed is for systems to be more accountable, more efficient, and more effective with their resources and operational mandates. And, while localized and regionalized research can and does provide invaluable evidence-based knowledge for policy-making, it is becoming increasingly apparent that with the popularization of meta-analysis and the search for 'best practices' the CCJ research can play a vital role in advancing criminal justice systems.

In summary, as the world become euphemistically smaller and English more commonly and widely spoken around the world, it is becoming easier to engage in comparative research. And in a world where we are also increasingly realizing that 'our' issues are not unique, it becomes ever more important to inform criminal justice policy through sound comparative criminal justice research.

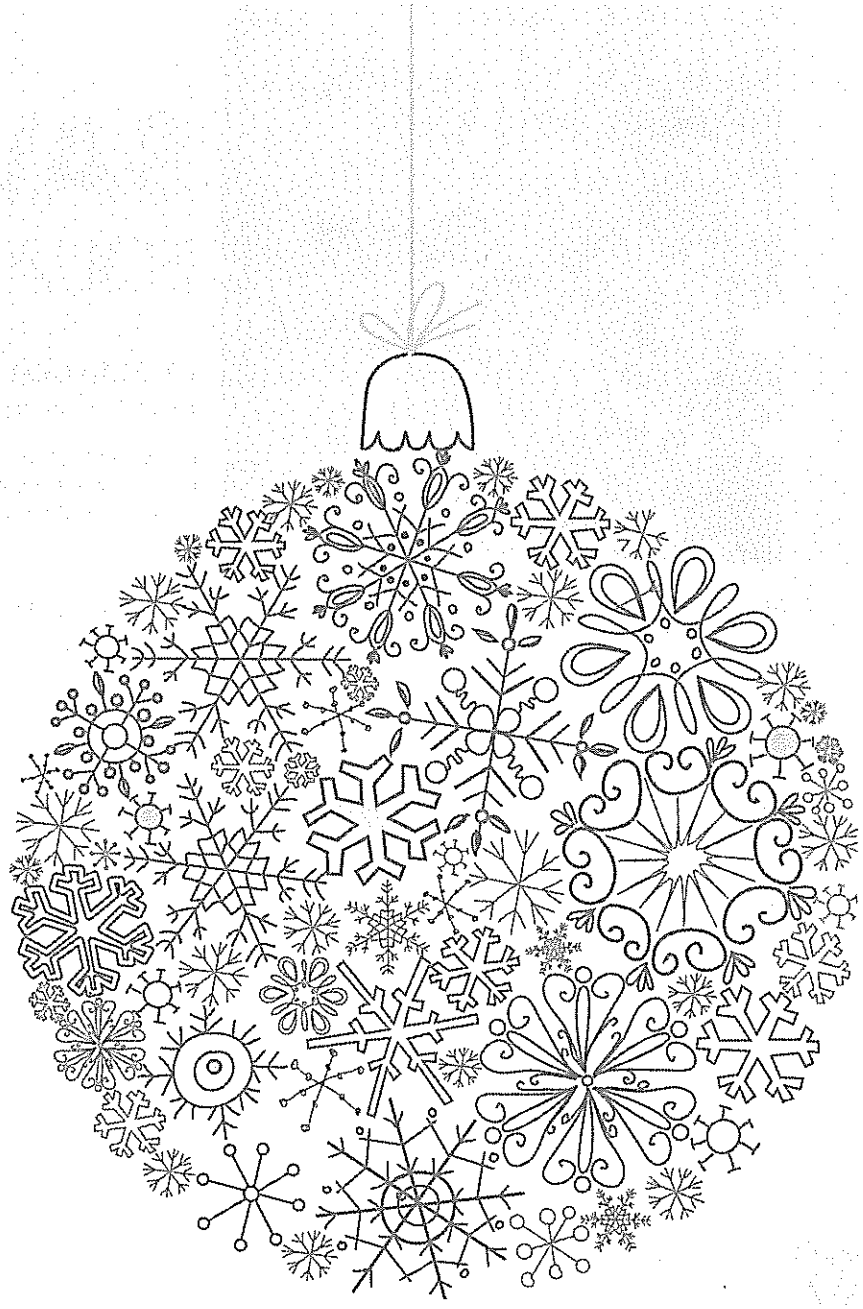
SOME KEY BENEFITS OF COMPARATIVE CRIMINAL JUSTICE RESEARCH:

1. To tailor criminal justice policy, be it for law enforcement, juvenile justice, or any other element of the CJS to better reflect realities.
2. To provide historical, political, and general descriptive accounting of models of criminal justice around the world.
3. To explore how different cultures and/or government systems influence the criminal justice system.
4. To learn how and why the various criminal justice systems have changed and transformed over time. This is an important part of understanding why and how the current justice systems operate the way they do.
5. To identify the 'best' practices for criminal justice reform.
6. To explore alternatives to traditional CJ practices, such as restorative justice, transformative justice, etc.
7. To explore alternative means and methods of CJ spending.
8. To explore different models of justice administration.
9. To explore how to reduce one of the most critical factors that promote crime and the need for a criminal justice system in the first place – that is, poverty and social inequality.
10. To establish a richer understanding of the public and political misunderstanding of why we've not been very successful at curbing ethnocentric responses to crime.

AN EXAMPLE OF LESSONS LEARNED THROUGH COMPARATIVE RESEARCH/INQUIRY

The use of corporal punishment (derived from the Latin meaning 'body') to discipline children in a family setting has been a practice that dates back to ancient times when practices such as flogging were very common. Until fairly recently, there were few countries where corporal punishment wasn't used by families as a disciplinary measure. In fact, corporal punishment (CP) of children by their parents is still a fairly common practice among Canadian families, despite compelling evidence to its ineffectiveness. After much research, Sweden, long acknowledged for its liberal approach to justice, banned the use of CP in the late 1970s. Within a year, research results showed a positive measurable outcome in terms of the perceived sense of well-being among children. As a result of comparative research and inquiry, a growing number of other European countries have now also banned the use of CP as a disciplinary measure for children. Yet, in spite of the growing evidence, many Canadian parents continue to use CP. This demonstrates that knowledge gained through comparative criminology / criminal justice could be used as a basis for changing legislation in Canada. ••

Dans le cadre de cet article, le professeur John Winterdyk situe la justice criminelle comparée en soulignant que la criminologie comparée, l'étude de la criminalité sur notre territoire, sur les plans international et transnational, « constitue l'étude de la criminalité en tant que phénomène social et que comportement social », alors que la justice criminelle comparée s'intéresse principalement « aux moyens par lesquels divers pays s'efforcent de maintenir l'ordre social et d'assurer la justice ». Winterdyk fait ressortir le besoin urgent d'une reddition de compte, d'une efficience et d'une efficacité accrues au chapitre des ressources et des mandats opérationnels et soutient que la recherche en justice criminelle comparative peut jouer un rôle essentiel dans l'avancement des systèmes de justice criminelle au moyen de métaanalyses et d'une recherche de pratiques exemplaires.



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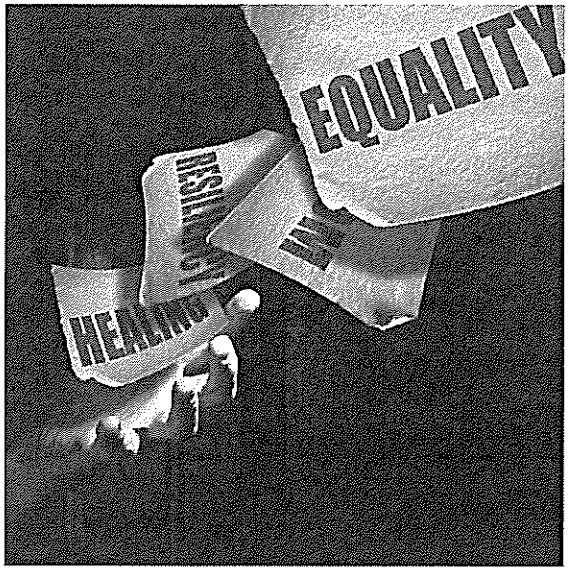
L'ACJP souhaite à ses membres
un temps des fêtes agréable & paisible!



SAWBONNA: EQUALITY & *US VS. THEM*

BY MARGOT VAN SLUYTMAN, BA, MA,
Award-winning Poet & Mentor

Member of The Canadian Criminal Justice Association
Member of Restorative Justice International
Member of The National Association for Poetry Therapy

Reconciliation heals only as well and persists only as long as the participants understand each other and acknowledge each other as equals (Schlink 85).

Recently while attending a talk given by Paul Martin, Jr. about initiatives on Aboriginal education within a more just framework, I was moved by the fact that we still speak from an us vs. them dialectic when we speak about relationships, and in so doing, we seem to easily forget about our inter-relationality. Our shared humanity. In deciding to pose a question to Mr. Martin, I contextualized it in this way, "I am a supporter of Sawbonna, a kindred sibling of restorative justice. I have met the man, Glen Flett, who murdered my Father, Theodore Van Sluytman. We are now Margot and Glen, no longer defined by the notions of being victim and offender. As a 'white woman' who values education and who is deeply concerned about and involved with living the changes in the world I wish to be, might you please tell me how we can engage in dialogue about how justice affords inclusivity, diversity, and many voices, without drawing from a us vs. them paradigm?" Mr. Martin's answer was fair, if a bit too broad-based. "We do this through education."

Education. Such a simple word. The great equalizer? I would argue not. If Bernhard Schlink is correct in stating that, "reconciliation heals only as well and persists only as long as the participants understand each other and acknowledge each other as equals," then we need to address how in fact education narrows the gap in a Native vs. white dialectic where reconciliation regarding past and present atrocities is as yet in stages of infancy, contoured with shame, guilt, and fear on both sides.

Justice, like education, is fettered with and bound up in notions of power, including who wields it, how, and why. In my own relationship to navigating the terrain of life after violent crime, what was important to me was that I spoke my needs and that those needs were heard. Further, I did not want my healing, which included re-storying of my relationship to meaning, left up to a system, an adversarial criminal justice system for example that meant that I was not even invited to the table to share my needs, my wants, and my story. Expectations about how and who I was supposed to be in relation to life after murder, and expectations about how and who Glen was to be, were as oppressive as living with the dark and suffocating knowledge of the loss of life.

I do not like it when others attempt to speak my needs, my story. This awareness continues to be a potent ally. When I started to express my needs and to engage in dialogue in the manner that I needed in order to live with authenticity and integrity, I was no longer an outsider to my own journey. Personal power was reestablished. The more I expressed, the more I was seen and heard. Because of this I continued to learn what I needed. I learned what I could offer.

LIFE AFTER CRIME... A CELEBRATION OF RESILIENCY

The expression that I use for my relationship to life after crime, which includes powerful growth, healing, and gifts I did not have prior to my Father's murder, is "celebration of resiliency." When I think about what dialogue needs to be birthed in relation to justice and the Aboriginal communities, I think about Sawbonna. I think about Margot and Glen. I think about story. I think about seeing other and being seen by other, not as outsiders to savage brutality. I think about our inter-relationality. I think about finding and creating

ways of seeing and being seen in an effort to hear, to share, to sit with, to accompany, to teach, to learn.

And what is Sawbonna? And how exactly does it address the areas of education and justice from points of view that blur, if erase, the oppressive hold which power has on continuing an us vs. them notion wherein equality is but a fancy word with little sustenance, whereby accountability appears a mesmerizing notion.

SAWBONNA...
A KINDRED SIBLING OF RESTORATIVE JUSTICE

Sawbonna is a Zulu word that means, "I see you...I see your true self your fundamental goodness" (Casarjian 59). Sawbonna is also the title of my book about the retrieval of my life... from murder to meaning. At a more figurative level, one could describe Sawbonna as a place of restoration and healing. The word and its meaning were taught to me by Glen Flett. Sawbonna has become for me a substitute for the many varied applications and lived-realities of restorative justice. Sawbonna is not the spelling out of confining precepts, nor is it an event bound to personal story, to a moment in time, or to stringent rules and regulations. It is an ongoing process wherein the empowering of relationships is informed by designing content that makes it possible to address how we can live with each other daily. Part of the design of these ways to enter dialogue with and about Sawbonna, is acknowledging that trust must be gained in order for personal and individual stories to be shared, that equality is both desirable and possible.

SAWBONNA

My souls sees your soul.
And our shared dancing,
Stretches to the very core
Of all that is possible.
All that is.
(Van Sluytman, *The Other Inmate)*

SAWBONNA

Mon âme voit ton âme.
Et le pas de danse que
nous effectuons de concert,
S'étend jusqu'au Coeur même
De tout ce qui est possible.
De tout ce qui est.
(Van Sluytman, *L'autre prisonnier*)

EMPOWERMENT THROUGH HARMONY

Sawbonna, with its core value of empowerment, situated upon a belief in being seen and seeing other, and in being heard, and hearing other, invites trust. The acceptance of intense emotions, abundant questions, tears, laughter, expletives, and a powerful knowing that the process of engagement itself guides the interactions, is one of Sawbonna's strengths. Because it is experiential and inclusive, and because it invites and inspires the choice to take personal responsibility, it is not contingent upon face-to-face meeting of victim and offender. This is one potent reason why it is effective for victims, offenders, and our communities. Sawbonna is a system whereby dialogue is invited to flow out because it is conceptualized with the vision of creating and living harmoniously with our very self, and in relationship with others exactly where we are at any given moment in time. Key here is the fact that though living harmoniously is a positive and life-enriching gift we offer to others and ourselves, it does not mean ignoring and denying anger, shame, guilt and fear.

CONNECTING WITH AUTHENTIC EMOTIONS AND FEELINGS

It means truly connecting with our authentic emotions and feelings, and expressing them within open, safe, and supportive contexts. It speaks equality. What I began to recognize after Glen addressed me with the word Sawbonna, was that Sawbonna is about seeing the essence of another individual, her complexity, including goodness, worth, beauty, angst, frustration, and anger and not merely seeing a particular definition of an act or a cultural or societal sanction. The automatic responses about who and how an individual is supposed to be or about who and how an individual has become are often based on an act committed against her, or an act she committed; but we are whole beings. We are not merely the crime we have committed or the crime committed against us (Van Sluytman, MA Thesis, 2012).

PLACES OF HEALING...

As whole beings we come to the places of healing, circles, courtrooms, basements, college and university campuses, kitchen tables, with our stories, with our wisdom, with our masks abandoned at the door. We come together in dialogue conscious that we are each responsible for shaping what our relationships to power, hence equality means, and can mean. Nothing is ignored, forgotten, glossed over. We come with our guilt and shame and knowings. We come together because we know that us vs. them is certain to feed

and encourage systems of hegemony which insist on exclusion and quick fixes. We come together to enter truth, not as stock characters, not as symbols, but as people meeting soul-to-soul, eye-to-eye, heart- to-heart, even if those hearts are bruised, bashed, broken. Glen and I did it. By choice. With hope. With longing.

AUTHENTIC ENGAGEMENT THROUGH RECONCILIATION AND RELATION

I share Sawbonna as a way to parallel the exquisite possibilities for enriching the inter-relationality among Natives, whites, non-whites, all of us on journeys of growth. Rupert Ross states it well when he notes, "We blithely make pronouncements about what we will do for them and then impose our structures and institutions without ever explaining why we built them and how we believe they will produce desire results" (Ross xxv). No one ever wants to have impositions made on our freedoms of voice and choice. Authentic engagement in reconciliation and relationship means that we enter vast, airy llanos of possibility not cruel cages of steel trapped assumptions and ready-made decisions which honour systems and not people.

Sawbonna is a map to those llanos. It offers lush understandings of relationships to what the content and delivery of education can look like, to what educating means and can mean. And Sawbonna invites equality. ••

REFERENCES

Casarjian, Robin. (1995). *Houses of Healing: A Prisoner's Guide to Inner Power and Freedom*. Boston, MA: The Lionheart Foundation.

Ross, Rupert. (1992). *Dancing with a Ghost: Exploring Indian Reality*. Markham, ON: Octopus Publishing Group.

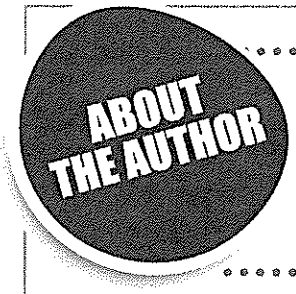
Schlink, Bernhard. *Guilt About the Past*. Toronto, ON: House of Anansi Press.

Van Sluytman, Margot. Paragraphs 5-7 are excerpted from, Final Project for The Master of Arts-Integrated Studies, June 2012, "Sawbonna: Justice as Lived Experience," http://dtpr.lib.athabascau.ca/action/viewdtrdesc.php?cpk=308&id=48984 Athabasca University.

Van Sluytman, Margot. (2008). *L'autre prisonnier: Conciliation de la justice-Conciliation de l'espoir*. Calgary, AB: Palabras Press, 2008. (French Translation Funded by Correctional Services Canada.)

Van Sluytman, Margot. (2008). *The Other Inmate: Mediating Justice-Mediating Hope*. Calgary, AB: Palabras Press.

http://dtpr.lib.athabascau.ca/action/viewdtrdesc.php?cpk=308&id=48984



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AWARD-WINNING POET, AND AUTHOR OF,
SAWBONNA: JUSTICE AS LIVED EXPERIENCE
http://dtpr.lib.athabascau.ca/action/viewdtrdesc.

From Howard Zehr, Ph.D:

"Margot continues to pursue her goal of encouraging deep dialogue about life after crime. She draws upon her own lived experience and vision of Sawbonna to enrich the restorative justice field with questions and insights."

BOOKS ON JUSTICE BY MARGOT VAN SLUYTMAN:

Sawbonna: I See You, A Real Life Restorative Justice Story.
Foreword by Howard Zehr, PhD, Eastern Mennonite University.

From Sr. Helen Prejean, csj, Author of *Dead Man Walking*

"In writing of her journey through grief, hope, and healing in *Sawbonna: I See You*, revealing the dialogue she shared with the man who killed her father, Margot Van Sluytman offers you a genuine and generous manner of how you too might navigate the seeming unnavigable world of life after violent crime."

The Other Inmate: Meditating Justice-Mediating Hope.
Poetry and Workbook for Restorative Practices.(Available in English and French. French Translation Funded by Correctional Services Canada.)

From Reinekke Lengelle, Professor of Writing and Personal Development, University of Athabasca.

"*The Other Inmate* offers you an opportunity to open the doors to your own healing. Van Sluytman invites you to go beyond the entrenched concepts of what it means to be victim and perpetrator, offering a guide to use your own words to break through the cycle of doubt and despair.

Pour Margot Van Sluytman, le dialogue constitue l'un des moyens de faire face à la vie à la suite d'un crime avec violence. Elle s'en prend à l'ambiance de confrontation inhérente aux systèmes de justice de nature accusatoire parce qu'ils limitent notre capacité de parvenir à un niveau supérieur de vérité dans nos interrelations. Les notions d'égalité et de guérison sont au cœur de la perception qu'a Van Sluytman du Sawbonna, dérivé du mot zoulou Sawubona signifiant « je te vois, je vois ta vraie personne et ta bonté fondamentale » que Van Sluytman a appris de l'homme qui a tué son père. Au sens figuré, Sawbonna correspond à un espace de résilience, de rétablissement et de guérison et se veut une approche sœur de la justice réparatrice, efficace auprès de victimes, des délinquants et des collectivités.

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BILL C-273

An Act to amend the *Criminal Code* to clarify that cyberbullying is an offence.

The Bill proposes to add communication by computer and the Internet as well as wording related to indecent and false messages.

PRC Views:

- "cyber bullying" is a criminal offence that not only young people can carry out; the term "harassment" is recommended;
- technologies are rapidly developing: laws need to address behaviours, not technology;
- law enforcement agencies need to be educated on the applicability of already existing legislation.

A preventative national strategy and public awareness campaign about the harmful effects of harassment and bullying would be a preferable alternative to criminal justice legislation.

BILL C-30

The *Investigating and Preventing Criminal Electronic Communication Act*

The Bill proposes to protect children from predators on the Internet.

PRC Views:

- Canadian children must be protected not only from Internet predators, but from any and all forms of abuse;
- any intrusive measure on an individual's privacy must be accompanied by reasonable and probable grounds that would precipitate the need to investigate further suspicions and/or reports of exploited children;
- in cases of emergency situations, in which a warrant cannot be immediately attained or might cause undo harm to the child victim, such intrusion must later be reviewed by the courts.

We must not choose between the rights of individuals and the protection of children: legislation must enhance our Canadian tradition of protecting the vulnerable and civil liberties enshrined in our *Charter of Rights and Freedoms.*

BILL C-350

An Act to Amend the Corrections and Conditional Release Act (Accountability of Offenders)

The Bill seeks to ensure that offenders' address their obligations to society including spousal/child support, restitution orders, victim surcharge and any other unpaid amount that has been ordered by a court.

PRC Views:

- CSC should ensure that prisoners are offered opportunities to be held accountable and take responsibility in a meaningful way;
- monies gained from lawsuits against the state should be used to help prisoners meet their social responsibilities;
- like any other citizen, prisoners have the right to sue the state and should not be discouraged from taking these actions by having monies gained treated differently from other sources of income.

Any monies awarded to an inmate as a result of a law suit against the state should be dispersed only as determined by a court.

By Irving Kulik
Executive Director | Directeur general
Canadian Criminal Justice Association | Association canadienne de justice pénale

PROJET DE LOI C-273

Le texte modifie le *Code criminel* afin d'ériger en infraction la cyberintimidation.

Ce projet de loi propose d'inclure les actes comportant l'utilisation d'un ordinateur ou d'un réseau d'ordinateurs, y compris Internet, de même que la transmission de messages indécents et de faux messages.

Vues du CEP :

- La « cyberintimidation » est un acte criminel pouvant être commis par d'autres que des jeunes; il est recommandé d'utiliser le mot « harcèlement ».
- Les technologies évoluent rapidement: les lois doivent régir les comportements et non à la technologie.
- Il faut éduquer les organismes d'application de la loi relativement à l'applicabilité des lois déjà existantes.

Une stratégie nationale de prévention et une campagne de sensibilisation du public traitant des effets dommageables du harcèlement et de la cyberintimidation s'avéreraient une alternative préférable à une législation pénale.

PROJET DE LOI C-30

Loi édictant la Loi sur les enquêtes visant les communications électroniques criminelles et leur prévention et modifiant le *Code criminel* et d'autres lois.

Ce projet de loi vise à protéger les enfants des cyberprédateurs.

Vues du CEP :

- On doit protéger les enfants canadiens, non seulement des cyberprédateurs, mais aussi contre toute forme de maltraitance.
- Toute mesure d'intrusion dans la vie privée d'une personne doit être assortie de motifs raisonnables et probables pouvant hâter une enquête sur d'autres soupçons ou rapports afférents à des enfants exploités.
- Dans les cas d'urgence où il n'est pas possible d'obtenir un mandat immédiatement et où un délai pourrait causer des torts indus à un enfant, il faudra qu'une telle intrusion fasse l'objet d'un examen subséquent par les tribunaux.

Nous ne devons pas avoir à choisir entre les droits d'une personne et la protection des enfants : les lois doivent renforcer notre tradition canadienne de protection des personnes vulnérables et des libertés civiles enchâssées dans notre *Charte des droits et libertés.*

PROJET DE LOI C-350

Loi modifiant la *Loi sur le système correctionnel et la mise en liberté sous condition* (responsabilisation des délinquants)

Ce projet de loi vise à assurer que les délinquants s'acquittent de leurs responsabilités envers la société, incluant le soutien à leur conjointe et à leurs enfants, les ordonnances de dédommagement, les suramendes compensatoires ou toute autre somme impayée ordonnée par la cour.

Vues du CEP

- Le SCC devrait veiller à ce que les détenus aient la possibilité d'être tenus responsables et d'assumer leurs responsabilités d'une manière significative.
- Les indemnités accordées à des délinquants dans le cadre d'actions ou de procédures engagées contre Sa Majesté devraient être utilisées pour aider les délinquants à s'acquitter de leurs responsabilités sociales.
- Les indemnités accordées à des délinquants dans le cadre d'actions ou de procédures engagées contre Sa Majesté devraient être utilisées pour aider les délinquants à s'acquitter de leurs responsabilités sociales.

Toute somme accordée à un détenu à l'issue d'une procédure intentée contre l'État ne devrait être répartie que selon les directives de la cour.

PORTRAIT OF A PAROLEE

BY VERNON WILSON

Vernon Wilson is at the Regional Treatment Centre and is the winner of the *Arthur M. Trono Community Justice Award For Creative Writing* sponsored by the Victoria Citizen Advisory Committee to the Federal Community Correctional endevours in Southeran Vancouver Island.

On a quiet winter evening, in a nothern reservation, in my grandparents' warm home, there I sat on a tanned leather sofa, reading a philosophy book, preparing for the next semester of university. It was getting late and before leaving the living room for the night, I noticed a traditional native painting hanging on the wall. Athough it had always been there, I had never given it my undivided attention. It was titled "Optimism". As I contemplated the shapes of the ovoids and u-forms, my grandmother entered the room.

"Who is this painting by?" I asked curiously.

' Oh... isnt't it beautiful? It's by Luke Wilam, your grandfather's nephew," she replied.

Considering he was a relative, I asked her, "Why have I not met him?"

My grandmother hesitated, sighed, and then reluctantly told me the truth,

"Luke was recently released from prison. He's serving his life sentence on parole now."

At this news. I suddenly found myself denying the painting's beauty and its intrinsic worth. In my arrogant and naive perception, the painting had become a deception. " How could a former criminal author such art?" I thought to myself. Little did I know, I would soon encounter a hidden reality that would humbly remove my prejudice...

On a noisy winter night, in a secluded area of the lower mainland, in a maximum security penitentiary, in a rundown cell, there I lay on a bottom bunk bed. Pondering the past two years behind prison bars. I read a postcard sent to me by my cousin. Luke:

"Make the impossible possible. Never give up hope. Be your own leader, but find a person to look up to as a guide. I went to Sweat Lodge Ceremonies for spiritual assistance. You will make it back home."

The tragic choices I have made in life resulting in my incarceration have somberly provided me with a realistic perspective on "criminals" that neither a university course nor a textbook could teach. Not only have a realized that every citizen, regardless of socio-economic status, has a potential to offend the law. I also no longer see my cousin, Luke, as an inferior citizen due to his parole status. Rather, I regard him as a superior citizen by virtue of it. For with a bird's eye view. I am now all too aware of the self-determination, inner-strengh, and, yes, optimism required in order to create something beautiful out of one's life in a prison environment.

More importantly, knowing that Luke is in the community, living and breathing his traditional culture as a law-abiding citizen and having experienced his unconditional love and support throughout my imprisonment hast further taught me that in spite of one's previous criminality, there remains a deeper humanity. A humanity empowered with the ability to transform brokenness into a sublime portrait of redemption. ••

Cet article a reçu le Prix de la justice communautaire Arthur M. Trono pour la création littéraire. Wilson s'exprime de façon succincte et émouvante. Cette nouvelle se veut un plaidoyer pour la tolérance, le soutien et la compréhension et envoie un message fort d'une perspective autochtone relatif aux notions de préjudice, à la nature multidimensionnelle et multicouche de l'exclusion sociale, de même qu'à la criminalité dans un cadre de guérison communautaire et de rédemption.

UNDERSTANDING INMATE SUBCULTURES

BY CINDY WHITTEN NAGLE, BA, MSc

There exists a culture behind prison walls characterized by violence, active drug trades and a hierarchy of inmate leaders. Similar to members of society at large, inmates create a subculture in order to help them cope with the pressures of doing time. The rules created and enforced by the inmate population, known as the "inmate code", are what establishes the parameters for survival in life behind bars. These rules have resulted in violence, leadership and the use of a specific language within the inmate population. While the creation of subcultures is inevitable inside prison, it is also very dangerous as there are often violent consequences to those inmates who do not adhere to these specific rules developed and regulated by inmates. All inmates are influenced to some degree by the presence of an inmate subculture, regardless of how criminally ingrained they may be.

THE INMATE CODE

People in any type of society form groups or subcultures that create their own rules and norms; prisoners are no different. A subculture can be defined as a group of people who are differentiated from the larger society to which they belong. Inmate subcultures feature their own system of values, social hierarchies and code of behaviors. Prisoners create an "inmate code", which is developed and regulated by the inmates themselves and usually represents a collective opposition to prison authorities; this code embodies the rules and accepted behaviors among inmates. The development of an inmate code and the effects it has on inmate behaviors is what constitutes a distinct inmate subculture[1]. There are many rules encompassed within the inmate code, ranging from specific times when an inmate's toilet can be flushed, to who leads the drug trade. Prisoners quickly become aware that whistling, reaching over food trays, or turning the volume up on the television without permission from the inmate leaders is strictly prohibited. Respect is the common feature of inmate codes; the higher an inmate is on the food chain, the more respect he gets. For example, inmates will often set a schedule of when each inmate is allowed to use the phone and how long the calls are to be. If an inmate is a leader, or "kingpin", then he will be granted the most desired phone time and will certainly be given the longest time frame in which to use the phone. Similarly, the inmate who holds no status among the inmate population will be given only a few minutes on the phone at a time when no other inmates want to make a phone call. The norms and values created by an inmate code provide inmates with an informal means to gain power and status[2]; this notion is central to the formation of inmate subcultures, as inmate rules are enforced from the top down.

LEADERSHIP AND VIOLENCE AMONG INMATES

There are many determinants of leadership in a prison community; interestingly, the characteristics of inmate leaders are quite different from those of the leaders of in free society. Factors related to criminal history and institutional conduct are significantly associated with inmate leadership, while social and economic traits are not[3]. Inmate leaders have served more time in prison, are generally convicted of violent crimes and are more likely to be repeat offenders. Similarly, inmate leaders are more likely to be diagnosed as psychopathic, have several institutional charges and are at a greater risk of violence against other inmates or of escaping lawful custody[4]. In other words, short-term inmates, first time offenders and those convicted of non-violent crimes are often dominated by such violent recidivists[5]. Inmate leaders value the inmate subculture and are the prisoners who create and enforce the rules in order to obtain increased personal power and status.

[1] Clarke, Richard D and Garofalo, James. (1985). The Inmate Subculture in Jail. *Criminal Justice and Behavior*, 12(4). P. 415.
[2] Hensley, Christopher. (2003). The Evolving Nature of Prison Argot and Sexual Hierarchies. *The Prison Journal* 83(3), P. 290
[3-4] Schrag, Clarence. Leadership Among Inmates. *American Sociological Review*, P.40
[5] Ibid., p. 41

It is they who benefit most from the establishment of an inmate subculture because, as mentioned above, it gets them greater access to privileges such as the inmate phone. An inmate can obtain power and status within the inmate subculture by committing acts of violence inside the institution or by bringing in contraband, namely drugs. Inmates reinforce their own set of rules as a way to defy the goals of the institution and categorize other inmates[6]. Some inmates' status is predetermined prior to admission on the basis of their criminal convictions, which helps sustain and reinforce the hierarchical structure.

Inmates are often ranked in a hierarchy based mostly on their criminal convictions and the amount of time they have served behind bars. As noted above, an inmate with several violent convictions who has served several years in prison usually assume the role of leader, thus placing them at the top of the hierarchy, while inmates who have current or previous sexual offences or who have been termed a "rat" or "snitch" (by giving information to authorities) are ranked lowest among their fellow inmates. As a result of the social hierarchy encompassed with inmate subcultures, sex offenders often have to serve time on protective custody units as they would not be able to survive on general population ranges. Those prisoners who live by the rules of the code identify themselves as "convicts" while those who do not live by these rules are referred to as "inmates"; the "convict" identity is preferred as these are the inmates the top of the prison hierarchy[7]. Relatedly, if an inmate does not adhere to the rules of the code they may have to leave certain ranges for protection purposes; this is one of the main reasons why most inmates try to conform to the subculture of inmates: they do not want to pay the consequences for going against the code.

There are a range of consequences for those inmates who go against the rules of the inmate code; these consequences can range from ostracism to death. Violence is very prevalent within inmate subcultures; it appears to be the most common mechanism for ensuring compliance to the inmate code. Correctional Service of Canada reports that nearly half of the inmate population in Canada experienced physical assaults throughout their incarceration, many having been victimized by the use of weapons. The 'dark figure of crime' should be considered when determining the number of inmates who experience violence during incarceration. The 'dark figure of crime' refers to the notion that crime rates are inaccurate as there is a significant portion of crime that goes unreported. Keeping this in mind, it is very likely that far greater than half the inmate population has experienced violence while in prison. Oftentimes, inmates will not report an occurrence of violent victimization out of fear of further violence and/or ostracism. It is not uncommon for inmates to carry and/or use homemade weapons, referred to as "shanks". Shanks are made from daily objects such as a toothbrush, comb or pen. Inmates will sharpen the edge of an object, creating a knife-like object which is often used as protection against other inmates and sometimes against staff. Shanks have been used in inmate murders all over the world. Many institutions find shanks during cell and unit searches on a daily basis. The use of violence and the construction of shanks is also correlated to the prevalence of the active drug trades found in prison.

THE DRUG TRADE IN PRISON

Drugs of all kinds enter into prisons of all security levels on a daily basis. Drugs such as cocaine, marijuana and ecstasy are commonly smuggled into correctional institutions. Because drugs and drug paraphernalia, such as needles and lighters, are contraband to inmates, there are many efforts put in place by correctional staff to ensure that their existence is minimal. Inmates can be very creative when trying to import drugs into a correctional facility, methods such as throwing drug packages over exterior perimeter walls, transferring drugs during visits with friends or

[6-7] Trammell, Rebecca. (2009). Values, Rules, and Keeping the Peace: How Men Describe Order and the Inmate Code in California Prisons. *Deviant Behavior*, 26(5), p. 747

family members and placing drugs into body cavities prior to admission or readmission are all examples of common attempts that inmates use to try to obtain illegal substances. Active prison drug trades cause trouble for inmates and correctional staff alike; there is often violence associated with the competition to run the drug trade or to obtain a portion of the drug packages that have entered into prisons. This is extremely problematic because inmates can become more violent or unpredictable if under the influence of illegal substance, which places staff and other inmates at greater risk of violence. The prevalence of drug trades may make prison a very false environment for effective rehabilitation as there are often ulterior motives behind an inmate enrolling in a rehabilitative program. Inmates may participate in a program in order to interact with other inmates who are housed on various units within the prison for the sole purpose to pass drugs or obtain a package of drugs or drug paraphernalia. The drug trade in prison encourages secrecy among inmates, causing prisoners to sometimes use a specific coded language while incarcerated.

PRISON VOCABULARY

There exists a distinct vocabulary in the inmate code. The vocabulary and speech pattern of prison inmates is known as "prison argot" and is very distinct from those of non-inmates[8]. The specific language used in inmate subcultures strengthens the very nature of their code, because language provides the parameters of understandings for constructing social and cultural contexts[9]. Some examples of the distinct language used by inmates are: "rat" or "snitch" for an inmate who gives information to the correctional authorities or police, "skin beef" refers to sexual offences, such as sexual assault, and "screw" refers to correctional officers. There are several functions of prison argot for inmates; having a distinct language allows inmates to feel as though they belong to a group, which helps alleviate their feelings of rejection and refusal. Many inmates feel as though they do not belong to the free society but, after being socialized into the prison subculture, will feel a sense of belonging. Prison argot also facilitates social interaction and relationships among inmates while being a tool of social identification and secrecy[10]. Many inmates identify with the specific language described above and continue to use this language throughout their incarceration and on the streets to identify themselves as a part of the inmate culture.

WHY INMATE SUBCULTURES ARE CREATED

It is suggested by many researchers that prison subcultures are formed by inmates as direct result of the organization and structure of prisons. Sociologist Erving Goffman coined the term 'total institution' in his description of prison life; he explained that life for inmates is characterized by lack of control and seclusion from the rest of society[11]. All aspects of inmates are conducted in the same place, under prison authority. The prison subculture results from the attempt to adapt to the unique features of prisons as total institutions such as the deprivation of autonomy and lack of privacy[12]. Gresham Sykes (1958) explained in his book, The Society of Captives, that an inmate's deprivations and frustrations pose profound threats to their sense of personal worth. Inmates have their daily activities planned for them, they are told when to eat and when movement around the institution is approved. As a result, inmates have very little control over their daily lives. Therefore, prison subcultures are developed in response to the pains and pressure of incarceration while allowing inmates to feel a sense of control and belonging to a group. Due to the lack of control inmates have in prison, they often conform to the inmate code as it gives them a sense of control. Many inmates will adhere to the guidelines of the inmate code to gain for a sense of belonging, and this in turn fosters solidarity among inmates. A great of example of solidarity among inmates due to the formation of an inmate subculture is "Prisoner's Justice Day" is held on August 10th every year. This is a day of memorial to pay homage to the inmates who have died in prison fighting for rights of inmates. Prisoner's Justice Day was initially conceived to commemorate the death of Eddie Nalon who bled to death from suicide in the segregation unit of Millhaven Maximum Security Institution on August 10, 1974. Each year on this day, many inmates refuse to work or eat prison-prepared food in a show of solidarity towards Nalon and others inmates who have died since.

CONCLUDING REMARKS

The existence of an inmate subculture is inevitable due to how the environment and structure of prisons fosters several important deprivations, such as a lack of control and autonomy. Many inmates adhere to the code of rules developed by their fellow inmates for a sense of belonging and to obtain power and status throughout their incarcerated lives. The establishment

[8] Hensley, Christopher. (2003). The Evolving Nature of Prison Argot and Sexual Hierarchies. *The Prison Journal* 83(3), P. 291
[9-10] Ibid
[11] Cunningham, Alison Hatch and Griffiths, Curt T (2003). *Canadian Criminal Justice: A Primer (second edition)*. Ontario, Canada: Nelson. p. 231
[12] Clarke, Richard D and Garofalo, James. (1985). The Inmate Subculture in Jail. *Criminal Justice and Behavior*, 12(4), P.416

of inmate subcultures and the characteristics they embody for correctional staff... as related violence has become an everyday occurrence of life behind bars. ••

WORKS CITED

Clarke, Richard D and Garofalo, James. (1985). The Inmate Subculture in Jail. *Criminal Justice and Behavior*, 12(4), 415-434.

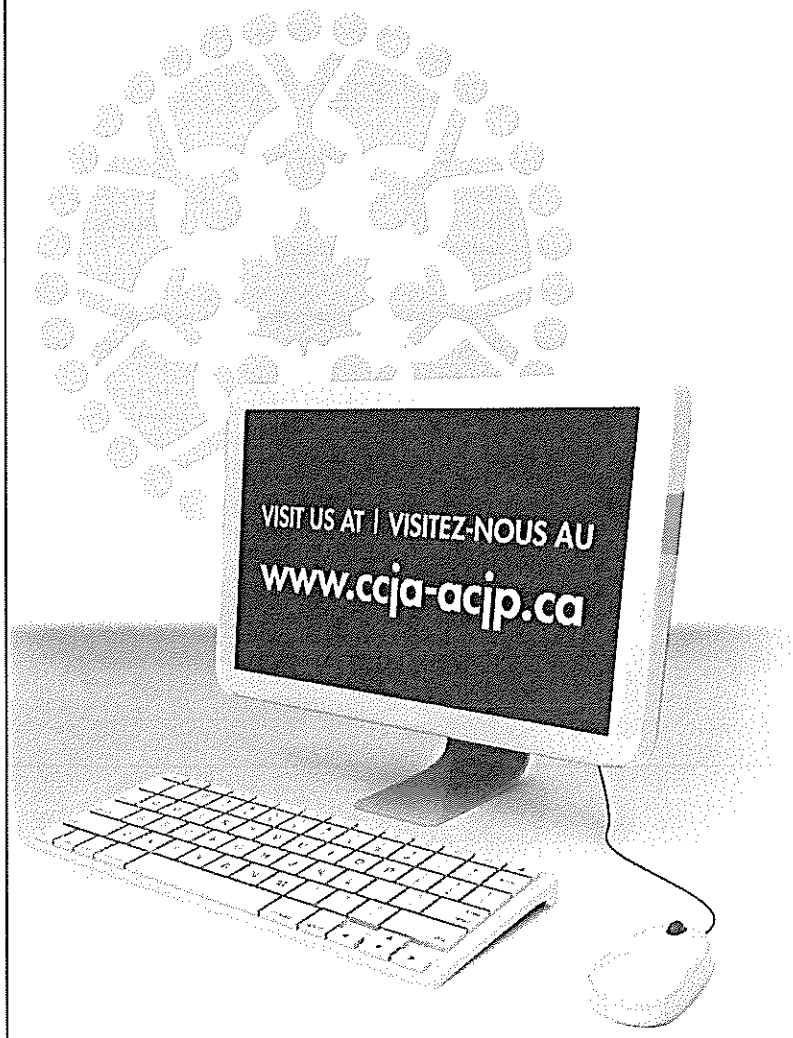
Cunningham, Alison Hatch and Griffiths, Curt T (2003). *Canadian Criminal Justice: A Primer (second edition)*. Ontario, Canada: Nelson.

Hensley, Christopher. (2003). The Evolving Nature of Prison Argot and Sexual Hierarchies. *The Prison Journal* 83(3), 289-300.

Schrag, Clarence. Leadership Among Inmates. *American Sociological Review*, 37-42.

Sykes, Gresham. (1958). *The Society of Captives*. New Jersey: Princeton University Press.

La sous-culture criminelle en prison s'appuie sur un code qui dicte les règles et régit les comportements. Les détenus créent et font appliquer ce code afin d'éprouver un sentiment de contrôle et d'appartenance, mais aussi dans le but de se doter de pouvoir, d'un statut et de privilèges. Les récidivistes violents tendent à occuper le sommet de la hiérarchie, mais certains détenus peuvent gravir les échelons en commettant des actes violents ou en faisant entrer de la contrebande, notamment de la drogue. La violence semble constituer le mécanisme le plus commun pour assurer la conformité au code des détenus.



THE STUDENT SPACE
L'ESPACE ÉTUDIANT

GENERAL GUIDELINES FOR ARTICLE SUBMISSIONS

As noted in the Editorial, beginning with this volume, the *Justice Report* will contain a new section entitled The Student Space. Insomuch as student members are forthcoming with making submissions, all subsequent volumes should contain one or more student articles. To assist students in framing their writing in an article rather than essay format, we have come up with the following guidelines:

The first paragraph should catch the reader's eye. Your model should be the opening paragraph of a good short story, not the beginning of an academic essay. You may want to link your idea to a current, well-known (Canadian) justice issue.

At the outset, your reader should have a general idea of where you are going – but you don't need a roadmap. We need to know in the first paragraph that you are writing about why WE SHOULD BAN POLITICAL DONATIONS, for example, but not that you will give us two arguments and two examples.

Accuracy, brevity and clarity - the writing should be concise but the meaning must come through very clearly and be well backed up with references and a solid conclusion.

PLEASE NOTE THAT YOUR SUBMISSION WILL BE READ FOR CONTENT AND CLARITY UPON RECEIPT AT CCJA AND SUGGESTIONS FOR REVISIONS MAY BE MADE. WE RECOMMEND THE USE OF HEADERS AND RESERVE THE RIGHT TO MAKE SUGGESTIONS REGARDING THEIR USE.

LENGTH

Submissions vary from 750 words to 2500 words. Longer articles will be considered, but may be printed over two volumes — Part I / Part II.

LIGNES DIRECTRICES APPLICABLES AUX ARTICLES SOUMIS

Comme nous l'avons souligné dans l'Éditorial, ce volume d'*Actualités-Justice* marque le lancement d'une nouvelle section intitulée Espace étudiant. Dans la mesure où nos membres étudiants seront disposés à nous soumettre des textes, tous les numéros subséquents devraient contenir un ou plusieurs articles d'étudiantes ou d'étudiants. Voulant aider les auteurs étudiants à présenter leurs écrits sous forme d'articles plutôt que sous forme de rédaction, nous avons élaboré les lignes directrices suivantes :

Le premier paragraphe devrait capter l'attention du lecteur. Vous devriez vous inspirer du premier paragraphe d'une nouvelle bien rédigée et non du début d'une dissertation. Vous pourriez aussi faire un lien entre votre sujet et un enjeu de justice actuel et bien connu, idéalement dans le contexte canadien.

Le lecteur devrait dès le début avoir une idée générale de là où vous l'amenez – mais il n'est pas nécessaire de lui tracer une carte. Par exemple, on devrait savoir dès le premier paragraphe que vous allez traiter de la nécessité d'ÉLIMINER LA CORRUPTION DE FONCTIONNAIRES, sans pour autant préciser que vous allez présenter deux arguments et deux exemples.

Précision, concision et clarté – le texte devrait être concis, mais son sens devrait s'en dégager très clairement et s'appuyer sur des références et une conclusion solide.

VEUILLEZ NOTER QUE L'ACJP PROCÉDERA À LA LECTURE DE VOS SOUMISSIONS POUR EN ÉVALUER LE CONTENU ET LA CLARTÉ ET QU'ON POURRAIT VOUS SUGGÉRER D'Y APPORTER CERTAINES RÉVISIONS. NOUS RECOMMANDONS L'UTILISATION DE TITRES ET SOUS-TITRES ET NOUS RÉSERVONS LE DROIT DE FAIRE DES SUGGESTIONS À CET ÉGARD.

LONGUEUR

Les soumissions devraient comporter de 750 à 2 500 mots. Les articles plus longs seront examinés, mais pourraient être publiés en deux parties dans deux numéros.

DEADLINES* / DATES DE TOMBÉE*

WINTER-HIVER 2013
FEBRUARY 15 FÉVRIER

SPRING-PRINTEMPS 2013
MARCH 11 MARS

SUMMER-ÉTÉ 2013
JULY 8 JUILLET

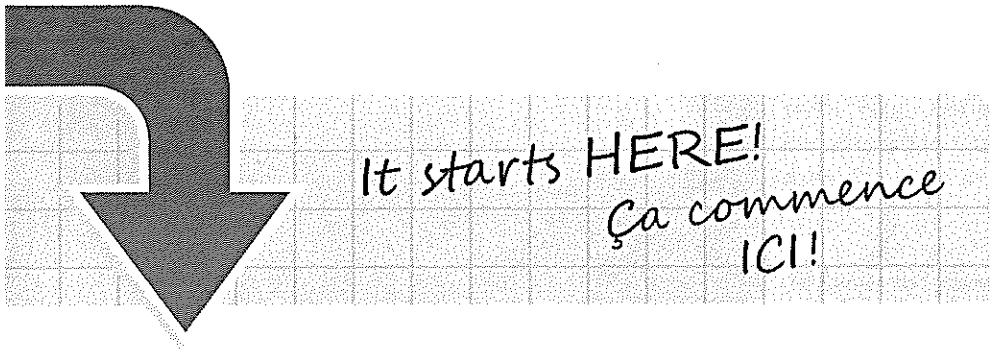
FALL-AUTOMNE 2013
SEPTEMBER 2 SEPTEMBRE

*articles may also be submitted prior to these dates
*les articles doivent être soumis avant ces dates.

CONTACT

If you have questions or comments, please do not hesitate to contact us at wright_nancy@rogers.com or ccja-acjp@rogers.com (put JR submission in the subject line), or by calling 613-725-3715.

Veuillez adresser vos questions ou commentaires à wright_nancy@rogers.com ou à ccja-acjp@rogers.com (inscrivant Soumission AJ dans la case objet) ou composer le 613-725-3715



THE CRIMINALIZATION OF THE MENTALLY ILL:

INSIGHTS ON CERTAIN ASPECTS OF THE MENTAL HEALTH COMMISSION OF CANADA'S FIRST MENTAL HEALTH STRATEGY FOR CANADA

BY ADAM VAUGHAN, Ph.D Candidate

School of Criminology, Simon Fraser University

The combination of the civil rights movement of the mid 20th century and the narrowing of civil commitment criteria, psychiatric institutions began to reduce their capacity in lieu of more community-based mental health facilities. Known as the deinstitutionalization movement, Torrey (1997) describes this shift in health policy as an abysmal failure and the major contributing factor to the criminalization of mental illness. Canada has not been immune to this global phenomenon and, presently, there is an increasing demand for mental health services to be provided within the Criminal Justice System (CJS)—namely in policing (Cotton & Coleman, 2010), courts (Schneider, Bloom, & Heerema, 2007), and corrections (Office of the Correctional Investigator, 2011).

Canada has developed various policies to counter or at least decelerate the criminalization of mentally ill persons. The recent publication of *Changing directions, changing lives: The mental health strategy for Canada* (Mental Health Commission of Canada (2012) is Canada's first attempt at a national mental health strategy and contains the most contemporary policy recommendations for combating the criminalization of the mentally ill. Under Priority 2.4 of this report, the Canadian Mental Health Commission (2012: 46) posits five recommendations for action to "[r]educe the over-representation of people living with mental health problems and illnesses in the criminal justice system, and provide appropriate services, treatment and supports to those who are in the system." This article briefly analyses the five tenets and discusses some of the pragmatic challenges that may arise when putting these into action.

MHCC RECOMMENDATION 1: ***"Increase the availability of programs to divert people living with mental health problems and illnesses from the corrections system, including mental health courts and other services and supports for youth and adults."***

RISK OF NET WIDENING

Diversion programs are often sought as a viable option for reducing the number of persons from entering or re-entering the CJS. Unfortunately, many offenders in the Canadian correctional system are mentally ill or develop signs of mental illness during their time in prison (Office of the Correctional Investigator, 2011). Problem-solving courts like the Toronto mental health court provide the CJS with the ability to reach more mentally ill offenders. Notwithstanding their noble intentions, policy makers must be cognizant of the possibility of 'net widening' or the concern that procedures and policies designed to reduce the interaction with the CJS have the opposite effect, whereby more people are brought into

contact with criminal justice stakeholders. The specific net-widening concern is the unethical processing of mentally ill persons if a court's motivation is provide access to mental health assessments, medications, counselling, and other services. This practise lies outside the purpose of the criminal court and circumvents the mental health care system (Redlich et al., 2006).

The police may also play a role in net widening. For example, a change in court practice "may prompt the police to begin arresting people with mental illness for offenses for which they would not previously have been arrested" (Stefan & Winick, 2005: 518). Several papers have been published on mental health policing in Canada, however, empirical evidence from Canada is necessary to validate the net widening hypothesis (Roesch & Slinger, 2010).

MHCC RECOMMENDATION 2: ***"Provide appropriate mental health services, treatments and supports in the youth and adult criminal justice system, and ensure that everyone has a comprehensive discharge plan upon release into the community."***

COMPREHENSIVE RELEASE PLANS ARE DIFFICULT TO IMPLEMENT

Constitutionally speaking, health care is the responsibility of each province. Provinces are free to adjust how much of their resources they wish to dedicate to mental health care. This variability within jurisdictions is evident in the differences in mental health care service between rural and urban settings where service is often a result of population density. When the mental health care system is underfunded and in direct competition with the provision of acute care, home care and the spectrum of other health service, one must realistically question the viability of ensuring every mentally ill offender has a comprehensive release plan.

The intersection between mental illness and criminal behaviour often involves a plethora of social and psychological determinants (Hiday, 2006) and comprehensive release plans will become exceedingly expensive for taxpayers, difficult to implement and perhaps more importantly, place unrealistic demands on offenders.

MHCC RECOMMENDATION 3: ***"Address critical gaps in treatment programs for youth and adult offenders with serious and complex mental health needs."***

DO OFFENDERS COMPLETE THEIR PROGRAMS?

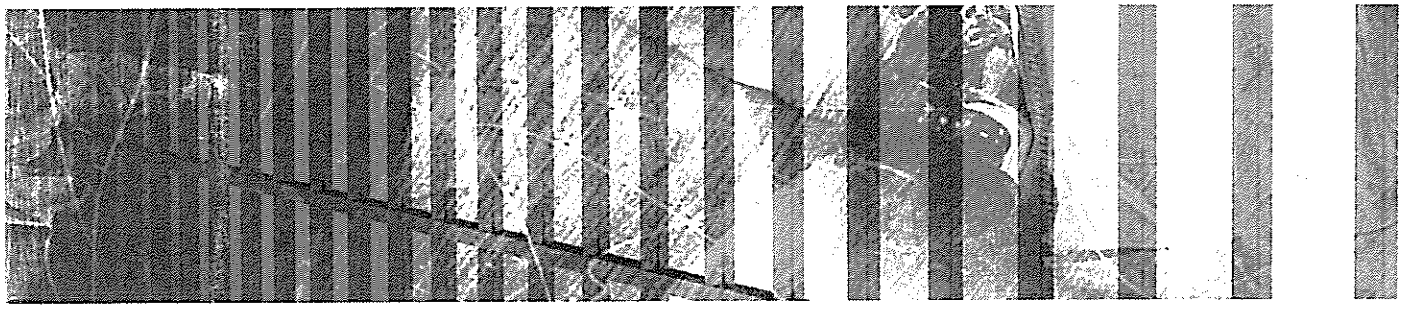
In order to address critical gaps in treatment and services for mentally ill offenders, some form of consensus must be established as to what consists of a significant treatment gap. Clinical risk factors, such as co-morbid substance use and addictions and non-compliance of treatment programs are associated with, for example, serious violent acts in the community (Swartz et al., 1998). Perhaps the most important area of concern is not the gaps in treatment programs, as many of these areas have already been identified in the literature. How much of a treatment program an offender completes is of more imminent concern.

For example, the reasoning and rehabilitation social problem-solving program increases psychosocial functioning Clarke et al., (2010) yet only 50% of mentally disordered offenders complete the program (Cullen et al., 2011). Similar findings are manifest in treatment programs in mental health courts. A "full dose" of mental health court programming—treatment, services, structure, supervision, and court monitoring for a set amount of time—reduces recidivism compared to participants that partially complete their programming (Moore & Hiday, 2006).

MHCC RECOMMENDATION 4: ***"Increase the role of the 'civil' mental health system in providing services, treatment and supports to individuals in the criminal justice system."***

HAS THE CJS BECOME A DE FACTO MENTAL HEALTH CARE SYSTEM?

In theory, if the public mental health care system is meeting the needs of the community, the use of civil mental health care



in the CJS should be minimal. With overly restrictive civil commitment criteria coupled with the fact that the civil mental health system is poorly funded and fragmented, the reality is that the CJS has become *a de facto* mental health care system. Implementing civil mental health services as a result of CJS involvement means the client will be under some form of state-sanctioned conditions for a recognized duration. Here, the concern is on the ethical dilemma of using the arm of the CJS to provide mental health care. Both systems use coercion as a tool for behaviour modification and the function of each is to separate patients/inmates from society through isolation (Goffman, 1990). As participants of state intervention, inmates and patients are often stigmatized as different from the rest of society and any future merging of these services should conduct a cost-benefit analysis to determine whether resources would be better used outside the CJS as a preventative policy approach.

MHCC RECOMMENDATION 5: ***"Provide police, court and corrections workers with knowledge about mental health problems and illnesses, training in how to respond, and information about services available in their area."***

PROCEDURAL JUSTICE, RESTORATIVE JUSTICE, AND THERAPEUTIC JURISPRUDENCE

As far as proactive policy is concerned, increasing knowledge via education and training is the only recommendation made by the Mental Health Commission of Canada for addressing the criminalization of the mentally ill. In terms of knowledge dissemination, this area is rich in theory development and program development. For instance, procedural justice, restorative justice, and therapeutic jurisprudence provide ample grounding from which innovative training programs can be constructed. The basic premise behind procedural justice logically transfers to contemporary policing models for persons with mental illnesses. For example, research from Nova Scotia shows that when police officers collaborate with mental health professionals and receive special mental health training, they can reduce the amount of time spent at each call and, more importantly, it keeps offenders in contact with mental health services for longer durations (Kisely et al., 2010).

Educational programs oriented to sensitize CJS personnel through knowledge of mental health problems and illnesses may have significant shortcomings. For example, the relationship between stigma and mental illness is systemic and goes far beyond the mandate of the CJS. Consequently, one cannot suggest that police officers, court personnel and correctional staff will behave differently if they were educated about the impact of mental illness. To achieve maximum effectiveness and longevity, training and educational programs need to go beyond front-line criminal justice workers and begin with communities as a whole.

CONCLUSION

The recommendations of the Mental Health Commission of Canada had the potential to provide a rarely explored approach to the criminalization of the mentally ill—a predominantly health driven perspective to an issue that exists in another facet of the state. Unfortunately, much of the recommendations as they relate to the criminalization of the mentally ill already exist in the literature. Other relevant areas of policy that increase the likelihood for mentally ill persons to encounter the CJS or the development of policy recommendations that are "outside the box" were absent from the report. For example, amending the *Criminal Code of Canada* to adopt a sentencing provision for diminished responsibility and or permitting judges to sentence offenders directly to hospital could have been included.

In future versions of the *National Mental Health Strategy*, the Mental Health Commission could view the criminalization of the mentally ill through epidemiology—a lens often used in the health sciences. For example, using the same methodology of Drucker's (2011) research on mass incarceration, one could

take an epidemiological approach to better understanding the size and nature of the mentally ill criminal population. Notwithstanding, *Changing directions, changing lives: The mental health strategy for Canada*, is the first of what one would hope to be many collaborations between experts in the CJS and the health sciences to bring issues of mental illness in the offending population to the forefront of national policy makers. ••

Cet article se penche sur ce qui se présente comme des défis pragmatiques que posent cinq recommandations découlant de la priorité 2.4 du document de la Commission de la santé mentale du Canada intitulé Changer les orientations, changer des vies : Stratégie en matière de santé mentale pour le Canada. Soulignant que ces recommandations se retrouvent déjà en bonne partie dans la littérature, que certains champs de politique pourraient contribuer à un plus grand nombre de confrontations entre des personnes souffrant de troubles mentaux et le système de justice pénale, soulignant de plus l'absence de recommandations imaginatives et hors des sentiers battus, Vaughan envisage une approche épidémiologique qui permettrait de mieux comprendre ce segment de la population criminelle.

REFERENCES

Clarke, A. Y., Cullen, A. E., Walwyn, R., & Fahy, T. (2010). A quasi-experimental pilot study of the Reasoning and Rehabilitation programme with mentally disordered offenders. *The Journal of Forensic Psychiatry & Psychology*, 21(4), 490–500.

Cotton, D. & Coleman, T. G. (2010) Canadian police agencies and their interactions with persons with a mental illness: A systems approach. *Police Practice and Research: An International Journal*, 11(4), 301-314.

Cullen, A. E., Soria, C., Clarke, A. Y., Dean, K., & Fahy, T. (2011). Factors predicting dropout from the Reasoning and Rehabilitation program with mentally disordered offenders. *Criminal Justice and Behavior*, 38(3), 217–230.

Drucker, E. (2011). *A plague of prisons: The epidemiology of mass incarceration in America*. New York: The New Press

Goffman, E. (1990). *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*. New York: Doubleday

Hiday, V. A. (2006). Putting community risk in perspective. A look at correlations, causes and controls. *International Journal of Law and Psychiatry*. 29, 316-316.

Kisely, S., Campbell, L. A., Peddle, S., Hare, S., Pyche, M., Spicer, D., & Moore, B. (2010). A controlled before-and-after evaluation of a mobile crisis partnership between mental health and police services in Nova Scotia. *Canadian Journal of Psychiatry*, 55(10), 662-668.

Moore M. E., & Hiday, V.A. (2006) Mental health court outcomes: a comparison of rearrest and rearrest severity between mental health court and traditional court participants. *Law and Human Behavior*, 30(6), 659–674.

Mental Health Commission of Canada (2012). *Changing directions, changing lives: The mental health strategy for Canada*. Calgary, AB: Author.

Office of the Correctional Investigator (2011). *Annual report of the office of the correctional investigator: 2010-2011*. Ottawa: Ministry of Public Safety.

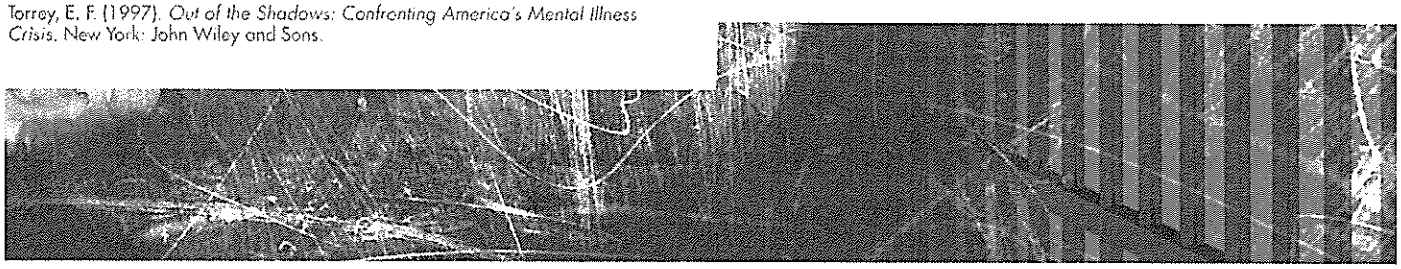
Redlich, A. D., Steadman, H. J., Monahan, J., Robbins, P.C., & Petrila, J. (2006). Patterns of practice in mental health courts: A national survey. *Law and Human Behavior*, 30(3), 347-362

Schneider, R. D., Bloom, H., & Heerema, M. (2007). Mental health courts: Decriminalizing the mentally ill. Toronto, ON: Irwin Law

Slinger, E., & Roesch, R. (2010). Problem-solving courts in Canada: A review and call for empirically-based evaluation methods. *International Journal of Law and Psychiatry*, 33, 258-264.

Stefan, S., & Winick, B.J. (2005). A dialogue on mental health courts. *Psychology, Public Policy, and Law*, 11(4), 507–526.

Torrey, E. F. (1997). *Out of the Shadows: Confronting America's Mental Illness Crisis*. New York: John Wiley and Sons.



LE POPULISME PÉNAL & LE DISCOURS POLITIQUE DU CANADA ENVERS LA CRIMINALITÉ

PAR JOANIE LAGANIÈRE, Étudiante, Maîtrise sur mesure en politiques pénales et pratiques pénitentiaires
Université Laval

Vivre en société signifie qu'il faut agir selon une certaine conformité, les différentes lois et droits coutumiers dictant de quelle façon il faut agir. Ceux qui dérogent aux lois dictées par la communauté sont considérés comme « criminels » et s'attirent une réaction sociale. La criminalité est un phénomène qui a toujours existé et, en dépit de tous les efforts pour le contrer, ce phénomène ne disparaîtra jamais. Néanmoins, tous les pays du monde tentent constamment, à leurs façons, de lutter contre la criminalité. Les questions de la criminalité, des « criminels » et surtout des moyens de les contrôler sont indissociables des questions liées à l'État et à son fonctionnement. En effet, l'évolution des pratiques pénales est tributaire de l'état des institutions et des discours politiques. Nous constatons, depuis plusieurs années, que les États-Unis et le Canada ont enclenché de véritables « guerres à la criminalité ». Deux discours s'avèrent particulièrement importants dans cette lutte, soit le discours axé sur la réhabilitation et, à l'opposé, le discours axé sur la répression, la punition, la dissuasion. Actuellement, le Canada prône un discours plus punitif et plus répressif à l'égard de la criminalité; de nombreuses lois plus punitives ayant d'ailleurs été adoptées, et ce, même lorsque le gouvernement était minoritaire.

LA PEUR DU CRIME AU CANADA

Au Canada, les actes qui constituent des crimes sont plus que des interdictions normatives inscrites dans le Code criminel. En effet, un crime est considéré en soi comme un acte qui semble immoral pour la majorité des gens, les lois criminelles étant donc l'incarnation d'un large consensus social sur la moralité (Sacco et Kennedy, 2002). Certains individus décident donc de commettre des crimes et font des victimes, alors que d'autres décident de ne pas commettre de crimes. Ainsi, certaines personnes se sentent insécures et ont peur d'être victimisées. Selon Maurice Cusson, « la sécurité n'est pas seulement un des objectifs fondamentaux du droit pénal, elle est aussi au coeur même du contrat qui lie les citoyens à l'État » (Cusson, 2011, p. 118). Nous entendons par sécurité l'état marqué par la confiance et le sentiment d'être à l'abri.

Un sondage démontre des malentendus

Un sondage réalisé par Gallup Canada, en 1994, indiquait que 68 % des Canadiens croyaient que la criminalité au Canada était en hausse dans les cinq dernières années, alors que durant cette année-là, la criminalité avait chuté de 5 % (Roberts, 2011, p. 15). Ceci pousse donc à croire qu'il y a un décalage important entre les statistiques officielles de la criminalité au Canada et la perception du public face au taux de criminalité. En effet, dans un rapport statistique portant sur le système correctionnel et la mise en liberté sous condition (Sécurité publique du Canada, 2010), il est mentionné que, depuis 1998, le taux global de la criminalité a diminué de 19 %. Ce constat est également évident dans la province de Québec, aux ÉtatsUnis et dans la majorité des pays occidentaux (Ouimet, 2010).

L'influence des médias

Le public tend habituellement à surestimer la probabilité d'être victimisé par le crime. De plus, les sondages scientifiques de Statistiques Canada « révèlent que moins de 30 % des Canadiens jugent que le système carcéral "contrôle bien les détenus" et moins de 20 % sont d'avis que les libérations conditionnelles font un bon travail de supervision des justiciables » (Leman-Langlois, 2007, p. 208). Ces perceptions de la criminalité et du système de justice pénale sont étroitement liées à l'influence des médias puisque c'est généralement par les médias que les citoyens apprennent à connaître le système de justice et à se forger une opinion sur la criminalité (Leman-Langlois, 2007; Roberts et Doob, 1990).

La « médiatisation » de la peur

Les médias jouent un rôle significatif dans la formation et la transformation des attitudes du public contre le crime, les criminels et le système de justice pénale. Le problème, c'est que les médias propagent souvent des idées fausses quant à la criminalité, influençant ainsi négativement le sentiment de sécurité (Leman-Langlois, 2007). Par exemple, selon une étude réalisée en 1990 à ce sujet, 25 % des délits rapportés dans des journaux étaient des meurtres, alors que le meurtre constitue seulement 1% de tous les crimes rapportés à la police (Roberts et Doob, 1990, p. 452). Les médias ont donc tendance à mettre l'accent sur des crimes qui sont pour le moins rarissimes, mais sensationnels, faisant ainsi la promotion de ces délits comme étant beaucoup plus courants qu'ils ne le sont en réalité (Mason, 2009 ; Sacco et Kennedy, 2002).

Une baisse de la criminalité représente peu d'intérêt médiatique

En effet, les médias tendent à préconiser les reportages à sensation forte et à mettre l'emphase sur les crimes les plus graves et la clémence ou l'injustice des sentences. De plus, une hausse de la criminalité fera la manchette, mais une baisse représente peu d'intérêt médiatique (Roberts, 2011). En effet, les médias sont très sensibles au marché et tentent d'augmenter leur cote d'écoute en mettant l'accent sur des événements sensationnels (Callanan, V. J., 2005). Dans cette foulée, les politiciens utilisent les médias pour contribuer à hausser l'insécurité générale d'une collectivité afin de promouvoir des politiques pénales plus sévères. Notons d'ailleurs, tel que rapporté par Kappeler & Potter (2005, p. 13), que le président Clinton avait activement contribué à augmenter la peur d'être victime de crimes violents aux États-Unis en alarmant les citoyens sur la hausse des crimes violents et ses conséquences durant les années 1990.

De nombreuses politiques ont été créées suite à des crimes hautement médiatisés

À ce sujet, mentionnons que de nombreuses politiques ont été créées suite à des crimes hautement médiatisés; tel le meurtre de Polly Klaas qui a sous-tendu l'adoption de la Loi des trois coups (*Three strikes law*) aux ÉtatsUnis (Lamalice, 2006), l'agression sexuelle et le meurtre de Megan Kanka par un pédophile qui a déménagé dans la rue sans que la famille ne soit au courant qui a soustendu l'adoption de la Megan's Law[1] en Californie, ainsi que l'enlèvement et le meurtre d'Amber Agerman, 9 ans, au Texas en 1996 qui a poussé à mettre en place l'alerte AMBER, un système d'alerte enlèvement à grande échelle lorsqu'une disparition d'enfant est signalée (US Department of Justice, 2012), etc.

LE POPULISME PÉNAL

Pour un politicien, miser sur le crime est un moyen efficace de se bâtir du capital politique sans rencontrer d'opposition importante puisque personne n'est théoriquement contre la vertu. À ce sujet, Julian Roberts utilise le terme « populisme pénal » pour « définir une politique ou une série de politiques populaires qui tentent de répondre à des demandes populaires - qu'elles aient été exprimées ou non. Ainsi, un politicien usant de populisme pénal tentera de récolter un maximum de votes en tablant sur la peur de crime » (Lamalice, 2006, p. 11). Donc, le populisme se distingue par une recherche systématique de la popularité politique, et cela, au détriment de l'efficacité ou de l'étude du bien-fondé de certaines décisions (Frost, 2006 ; Lamalice, 2005).

À ce sujet, au Canada, Normandeau (1986) mentionne que souvent, les universitaires et les chercheurs dans le domaine de la criminologie ont l'impression que les résultats de leurs travaux ne sont pas utilisés par les administrateurs publics. Ceci semble, en effet, être le cas puisque le gouvernement canadien mise sur des mesures axées sur la rétribution et la neutralisation au détriment de la réinsertion sociale, bien qu'il soit moult fois reconnu dans les recherches qu'un individu étant accompagné et surveillé lors de son retour en communauté aura plus de chance de réussir sa réinsertion sociale et que la criminalité est en baisse (Bérard, 2010).

Le populisme pénal est problématique...

Le politicien qui utilisera la tactique du populisme pour s'attirer la popularité du peuple fera la promotion de peines sévères et d'un discours dur envers la criminalité. Il parlera également « au nom » des victimes (Pratt, 2007). Le populisme pénal est problématique puisqu'il renforce l'idée selon laquelle le crime peut être contrôlé par des sentences plus sévères, alors que la recherche criminologique suggère pourtant le contraire. En tablant sur la lutte à la criminalité pour convaincre le public qu'il a « la solution » et qu'il souhaite « aider son peuple », le gouvernement, ironiquement, augmente les attitudes et convictions punitives du public (Easton et Piper, 2008).

DE LA RÉHABILITATION À UN DISCOURS PLUS PUNITIF

Tout comme les États-Unis[2], le Canada semble adopter aussi un virage punitif. En effet, nous pouvons constater qu'actuellement, les politiques du gouvernement canadien visent moins à traiter les personnes contrevenantes à l'extérieur des murs, mais cherchent plutôt à en incarcérer davantage. On tend également à encadrer les délinquants de façon beaucoup plus intensive qu'auparavant. Les idéaux de réhabilitation ont fait place à des idéaux davantage axés sur le contrôle et la coercition. Nous sommes toutefois à même de penser que cette tendance n'est pas prête à s'inverser puisque le discours pénal actuel tend vers des mesures de plus en plus répressives.

[1] La *Megan's Law* permet au public d'obtenir des informations sur les délinquants sexuels à partir de leur ordinateur depuis 2004 (State of California Department of Justice, 2012).
[2] Ce pays est, tel que mentionné par Landreville (2007), un cas atypique parmi les pays occidentaux puisqu'il est le seul à avoir un taux de détention qui s'est multiplié par quatre depuis 1970, pour atteindre 750 personnes incarcérées par 100 000 habitants en 2006. À titre de comparaison, le Canada en incarcère de son côté beaucoup moins, ayant un

1950 – 1980: Une mise sur la réhabilitation au Canada

Au Canada, plusieurs réformes et lois sur le système pénal ont été mises en place à partir de 1950 jusqu'au début des années 1980. À cette époque, la réhabilitation du contrevenant était davantage prônée et donc, plusieurs réformes allaient en ce sens. De nombreux rapports ont notamment visé la réforme des lois et du système pénal. Mentionnons notamment le Rapport Fauteux (1956), qui proposait une réforme de la libération conditionnelle afin qu'elle soit une « étape logique dans la réforme et la réadaptation d'une personne qui a été trouvée coupable d'un délit » (Landreville, 2007, p. 25) et le rapport Ouimet (1969), qui prônait la modération et l'idée que la réadaptation de l'individu offre une meilleure protection à long terme à la société.

La réhabilitation remise en question dans les années 1970

Toutefois, cette tendance à la réhabilitation sera remise en question dans les années 1970 « alors qu'éclate en Amérique du Nord ce qu'on décrira comme la crise du "Nothing Works"[3] » (Quirion et Vacheret, 2010, p. 393). Si dans les années 1950 à 1985, les principes de justice, d'équité et de modération en droit pénal étaient prônés, l'emprisonnement était vu comme une mesure de dernier recours et la réhabilitation du délinquant était au premier plan. Depuis les vingt dernières années, la protection de la société est donc devenue le nouveau leitmotiv. La fin des années 1980 marque, en fait, une époque fébrile en matière de justice pénale, notamment due à plusieurs cas de récidives violentes par des libérés conditionnels qui ont fait la manchette. Le durcissement pénal se fait sentir en 1984 et culmine en 1987 au Canada avec un projet de loi visant à rétablir la peine de mort, projet de loi qui a été défait. Depuis, plusieurs peines minimales, une loi réglementant certaines drogues et autres substances ainsi qu'une loi sur le crime organisé ont été adoptées, certains délinquants peuvent être déclarés délinquants dangereux ou à contrôler, de nouvelles infractions au Code criminel ont été créées, etc.

LE VIRAGE PUNITIF OU LA RÉHABILITATION?

Le virage punitif est donc défini comme étant « the desire to see greater numbers of people punished for greater durations and with increased severity. In short, punitivism is the « get though » mentality that says the solution to the crime problem is to "lock them up" and "hang them high" » (King et Maruna, 2006). Néanmoins, tel que le rapporte Allen (2006, p. 68), les recherches évoquent depuis plusieurs années que la prison « is a very expensive and largely ineffective measure, which can harm the prospects not only for offenders but also of their families ». La prison n'est pas la solution à la criminalité. Foucault l'a dit dans le passé : « la prison, dès son invention, est reconnue comme un échec total » (Leman-Langlois, 2007, p. 195). De plus, un des problèmes du virage punitif est que ceux qui prônent la punition et la dissuasion, notamment par le biais de l'incarcération, oublient une chose, soit que tous les gens doivent retourner un jour dans la communauté. Ne bénéficiant pas de programmes de réhabilitation ni de soutien, le résultat n'est pas inattendu : ils récidivent rapidement.

Le virage punitif présent partout dans le monde?

La thèse de la « globalisation » du virage punitif proposée par David Garland en 2001, thèse ayant pour objectif de démontrer que le virage punitif était présent partout dans le monde, a suscité plusieurs remises en question au Canada. En fait, Pat O'Malley soutient que la tendance punitive n'est pas aussi présente au Canada compte tenu que les analyses et les discours de plusieurs organismes et intervenants (notamment les services correctionnels et les ressources communautaires judiciaires) sont encore axés sur l'intervention. Il cite, à cet effet, les programmes de réhabilitation qui sont toujours présents dans les pénitenciers canadiens (Landreville, 2007). Bien que la sécurité de la société soit dorénavant le critère prépondérant, il n'en demeure pas moins que le système pénitentiaire canadien reste, malgré tout, encore orienté vers le changement du délinquant.

EN CONCLUSION...

Nous sommes passés d'une approche axée sur la réhabilitation à une approche qui s'oriente davantage vers une forme de neutralisation sélective et une protection accrue de la société. Il est difficile de

taux de 116 par 100 000 habitants en 2001 (Lalande, 2006). En plus d'entraîner des coûts considérables, il appert que non seulement les États-Unis punissent davantage, mais ils donnent de plus longues sentences comparativement aux autres pays occidentaux. En effet, « the average time served per violent crime [...] tripled between 1975 and 1989 » (Frost, 2006, p. 11).

[3] En 1974, Martinson publia un article qui a été communément nommé « Nothing Works » et qui a eu, au Canada comme ailleurs, un effet négatif sur l'idéal de réhabilitation.

concevoir que l'on ne peut pas apprendre de nos voisins. En fait, les États-Unis sont devenus, au tournant du 21e siècle, le pays ayant le plus de prisonniers, le plus haut taux d'incarcération, tout en demeurant un pays occidental aux prises avec de nombreux crimes violents. Ainsi, leur méthode ne fonctionne pas, le nombre de prisonniers augmente plus que la population en général et la moitié des détenus relâchés récidive, sans parler du coût annuel des infrastructures carcérales (Allard, 2011). Le gouvernement du Canada devrait donc ne pas répéter les mêmes erreurs que nos voisins. Bien entendu, il ne faut pas délaisser la protection de la société, mais il est important de savoir doser et, surtout, de miser sur la réhabilitation du contrevenant qui est la seule mesure qui peut, à long terme, assurer la diminution de la criminalité. ••

From the 1950s to early 1980s Canada policy makers took a rehabilitative approach to crime, but in the mid-80's a punitive shift occurred. Noting that media influences the public's sense of security and belief in the justice system, Joanie Laganière attributes this shift to sensationalism. To this end, she cites a 1990 study, showing that 25% of crimes reported in newspapers were murders even though murder had accounted for only 1% of all crimes reported, and a 1994 poll indicating that 68 % of Canadians felt the crime rate had been steadily rising for five years, while in reality it had fallen by 5%. Such misperception is problematic insomuch as it may engender penal populism, here defined as a policy or series of popular policies created in response to public demand.

RÉFÉRENCES

Allard, P. *Criminalité en baisse*. Site web consulté le 20 octobre 2012 : http://www.cyberpresse.ca/le-droit/opinions/editoriaux/pierre-allard/201107/22/01-4420295-criminalite-en-baisse.php

Allen, R. (2006). What works in changing public attitudes to prison: lessons from Rethinking Crime and Punishment. Dans Mason, P. (Eds.), *Captured by the media: Prison discourse in popular culture* (pp. 65-83). Portland: Willan.

Bérard, F. (2010). La criminologie clinique à l'épreuve des politiques : une pratique en perte ou en quête d'identité? Dans Poupart, J., Lafortune, D. & Tanner, S. (dir.), *Questions de criminologie* (pp. 125-134). Montréal : Les presses de l'Université de Montréal.

Callanan, V. J. (2005). *Feeding the fear of crime: crime-related media and support for Three strikes*. New York: LFB Scholarly Pub.

Cusson, M. (2011). *Pourquoi punir?* Livre en ligne tiré du site web le 20 octobre 2012 : http://classiques.uqac.ca/contemporains/cusson_maurice/pourquoi_punir/pourquoi_punir.pdf

Easton, S. & Piper, C. (2008). *Sentencing and punishment: the quest for justice*. New York: Oxford University Press.

Frost, N. A. (2006). *The punitive state: Crime, punishment and imprisonment across the United States*. New York: LFB Scholarly Pub.

Kappeler, V. E. & Potter, G. W. (2005). *The mythology of crime and criminal justice*. Long Grove: Waveland Press.

King, A. & Maruna, S. (2006). The function of fiction for a punitive public. Dans Mason, P. (Eds.), *Captured by the media: Prison discourse in popular culture* (pp. 16-30). Portland: Willan.

Lamalice, O. (2005). *Les reflets du système pénal dans les mécanismes de discipline sociale aux États-Unis*. Québec : Thèse Université Laval.

Lamalice, O. (2006). *Opinions publiques, incarcération et système pénal aux États-Unis : les influences de la classe politique et des médias*. Dans Lalande, P. & Lamalice, O. (2006) « La sévérité pénale à l'heure du populisme ». Extrait du site web de la Sécurité publique le 20 octobre 2012 : http://securitepublique.gouv.qc.ca/fileadmin/Documents/services_correctionnels/severite_penale/severite_penale.pdf

Landreville, P. (2007). Grandeurs et misères de la politique pénale au Canada : du réformisme au populisme. *Criminologie*, 40 (2), 19-51.

Leman-Langlois, S. (2007). *La sociocriminologie*. Montréal : Les Presses de l'Université de Montréal.

Mason, P. (2009). Crime, media and the state. Dans Coleman, R., Sim, J., Tombs, S. & Whyte, D. (Eds.), *State, power, crime* (pp. 185-199). Los Angeles: SAGE.

Normandeau, A. (1986). Stratégies de changement et politiques pénales. *Criminologie*, 19 (1), 171-187.

Ouimet, M. (2010). Pourquoi notre société est-elle de moins en moins violente? Dans Poupart, J., Lafortune, D. & Tanner, S. (dir.), *Questions de criminologie* (pp. 45-55). Montréal : Les presses de l'Université de Montréal.

Pratt, J. (2007). *Penal populism*. New York: Routledge.

Quirion, B. & Vacheret, M. (2010). Les mesures pénales pour adultes. Dans LeBlanc et Cusson (dir.), *Traité de criminologie empirique* (pp. 391-412). Montréal : Les presses de l'Université de Montréal.

Roberts, J. V. & Doob, A. N. (1990). News media influences on public views of sentencing. *Law and Human Behavior*, 14 (5), 451-468.

Roberts, V. J. (2011). *La peur du crime et les attitudes à l'égard de la justice pénale au Canada : bilan des dernières tendances*. Site web consulté le 20 octobre 2012 : http://www.publicsafety.gc.ca/res/cor/rep/_fl/2001-02-fer-crme-fra.pdf

Sacco, F. V. & Kennedy, W. L. (2002). *The criminal event: an introduction to Criminology in Canada*. Scarborough, Ontario: Nelson Thomson Learning.

US Department of Justice. *Amber Alert*. Site web consulté le 3 mai 2012: http://www.amberalert.gov/newsroom/publications.htm

A STUDENT'S PERSPECTIVE ON BILL C-10 PART II:

OVER LEGISLATION & OVER-INCARCERATION:

THE U.S.A. SITUATION, AND THE EFFECT ON YOUTH

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In Part I of this article (printed in Volume 27.3 of the *Justice Report*) I discussed the new crime legislation in Canada, and what it could mean to everyday Canadians. I looked briefly at the history of punishment as a deterrent, and explored the thought process that allowed society to shift from a punishment-based society, to a justice system based on rehabilitation. The first article explored how Canadian society has again made another shift, now moving towards a justice system based on retribution. And finally, the first article also explored how Canada is moving towards a failed American model of justice by imposing minimum mandatory sentences, and eliminating conditional sentences. The second half of this article will discuss two main issues: How this new legislation will effect youth in Canada and the notion of socially created crime as a result of over legislation.

New legislation in Canada aims to send a message to young people that there will be zero tolerance in regards to youth crime. Overall the purpose of the amendments are "to emphasize the importance of protecting society, and to facilitate the detention of young persons who reoffend or pose a threat to society" (Bill C-10 2012, p.4). With that in mind, the aim of Bill C-10 (2012) was to address four main issues in regards to the *Youth Criminal Justice Act*:

1. Emphasize deterrence and denunciation as sentencing principles.
2. Expand the case law definition of a violent offense to include 'reckless behaviour'.
3. Amends the rules for pre-sentence detention to facilitate the detention of young people accused of crimes against property (with a max. sentence of five years in prison).
4. The automatic publication of the names of youth offenders convicted of violent crimes (keeping in mind that the definition has been extended to include property crimes).

There are several problems with these goals. First, there is almost no evidence that suggests deterrence works for adults; if it did, the death penalty would be a successful deterrent to murder, and death penalty states would not have homicides. So the question becomes, *if it does not work for adults what makes us think it will work for youth?* Young people are impulsive; often they do not stop to think about what the punishment will be if they get caught. This is not only due to the fact that they do not think they will get caught, but due to a lack of knowledge and understanding.

CAN PUBLISHING THE NAMES OF YOUNG OFFENDERS AFFECT REHABILITATION?

Secondly, the amendment(s) to the *Youth Criminal Justice Act* (?) will change the legislation on publication bans to read as follows: "the court shall decide whether it is appropriate to make an order lifting the ban" and in terms of violent offenses, which now includes property offenses), the bill legislates that the Crown, and judge, must re-visit the issue every time there is a conviction for such offenses as: sex offenses, dangerous driving, threats, common assault, flight from the police, DUI; property crime, and harassment (Bill C-10, 2012). Further,

there is no requirement, officially, that the publication be limited to repeat or habitual offenders.

The purpose of a publication ban is to reduce the stigma associated with a conviction for a youth, and therefore focus the youth on rehabilitation. This new requirement jeopardizes this goal of rehabilitation by making the youth known to the public. While revealing the name of a youth who has been found guilty of a serious sex offense, or murder might be justified, is it in the best interest of society for youth names to be released for: harassment, dangerous driving, flight from police, or even uttering threats?

The danger is that releasing the name of a youth apprehended for minor infractions, such as breaking a window, could result in that youth being labelled a criminal. The problem is that once a person is labelled a criminal by the public, it is conceivable, for them to slip into the criminal role and fulfill a self-fulfilling prophecy. In other words, that they will simply take up the role that society has assigned to them and become the criminal society expects them to be. In other words if we decide to imprison, or 'other' a youth through labelling, we may be doing more harm to the youth, while also harming society. The youth in question will not only potentially hurt more people, but will cost the system more money.

SÉBASTIEN'S LAW- COULD THE PUNISHMENT HAVE BEEN HARSHER?

Let's look at a case example to demonstrate my point. The short title of the original bill (C-4, which was then compiled into Bill C-10) proposed was "Sébastian's Law" (commonly known to have been chosen in memory of Sébastien Lacasse, who, in 2004, was chased by a group of youths in Quebec, Canada and killed by a 17 year-old) before being bundled into the "Safer Streets and Communities Act". The law (formerly known as Bill C-4) has an underlining message that we are not hard enough on youth, and, as a result, young people are running wild. Proponents of Bill C-4 believed that those involved did not receive the proper punishment for their crimes. However, the facts of this case speak differently. The legal outcome of this particular incident, was fair, tough, and just (from a legality point of view).

Three adults pleaded guilty to manslaughter, and each received four years, a fourth pleaded guilty to criminal negligence causing death, and two others were charged with obstructing justice (Canadian Bar Association, 2010). Additionally the youth that actually stabbed the seventeen year old victim received life in prison, the toughest punishment under the youth criminal justice act, and the toughest penalty an adult could get for the same crime (Canadian Bar Association, 2010). The point of Sébastian's Law was not only to hold the youth offenders accountable for their decisions, but also to protect society from them. My point here is that no amendment proposed in Bill C-10 would have imposed a harsher sentence on this youth. In the case of this youth, short of bringing back the death penalty, no change made to the *Youth Criminal Justice Act* would have been a tougher, more appropriate, sentence than was handed down by the courts in 2004.

YOUTH ARE IMPULSIVE

The problem is that youth do not have a psychological state conducive to being deterred through legislation from committing crimes. Youth are generally impulsive, and are opportunists. Youth, generally, do not make elaborate plans to commit murder, steal, fight, or destroy property. It is often based on opportunity, if youth are given the chance to commit a crime they will (Matza, 1964). The majority of youth will not be sitting down to read this legislation

in full and understand it, let alone think about it before impulsively throwing a rock through someone's window, breaking into a car for an iPod, or getting into a fistfight at school.

Youth offenders, in the majority of cases, will be returning to society, and a tough on crime approach seems to ultimately risk more recidivism among this group of offenders. With unsealed youth records and the allowance of publication of youth names, coupled with the ease of simply "Googling" someone's name, youth will be entering back into society with a clear disadvantage. In effect, this may cause youth to revert back into criminal behaviour in order to get by in society as a means of getting by economically. According to the Canadian Bar Association, every single province and territory has experienced a reduction in youth court case loads, along with fewer custodial sentences under the *Youth Criminal Justice Act* (2010). If this is indeed the case, why would we be setting up youth to fail?

OVER LEGISLATION

Over legislation is the reason society ends up with socially created crime. The more legislation a society has, the more crime the people of that society will engage in, or appear to engage in. When you have more offenses that require prison time, it does not mean that the crime rate has increased; it means that government has just created more crime. Edwin Schur discussed the dangers of over legislation and the consequences he believed could be the result in his 1969 book entitled "Our Criminal Society." The author takes a stance from the labelling theory perspective speaking about the over legislation that was (and still is) taking place in U.S.A. society.

LABELLING IN ITSELF MAY CREATE DEVIANTS

That is, Schur asserted that acts are labelled as deviant in society, based on the norms of the community (Schur, 1969). In other words, deviance is not the act itself, but the label placed upon the act by society, and in turn on the person. The problem is that if society treats the person as though they are deviant this can produce a self-fulfilling prophecy and can potentially set in motion several mechanism which conspire to shape the person in the image that people have of them, as a result of societal expectations and norms. If a person is labelled a criminal by the public it is possible for them to slip into the criminal role and fulfill a self-fulfilling prophecy. That is, that they will simply take up the role that society has assigned to them and become the criminal we expect them to be. Therefore, we create more deviants, which artificially increases our crime rates, causing what some would say is a moral panic. He argues, that what ends up happening is we appear to have more crime, and this allows for the beliefs to emerge that crime is out of control and something must be done to control criminal behaviour (Schur, 1969). This circular issue is often used as a justification for, the problematic, tougher on crime stance.

SIMILAR LEGISTLATION PROBLEMATIC AND COSTLY IN TWO U.S.A. STATES

California, for example, has been almost bankrupt because of the crime policy. Examples of problematic legislation include the following: three strikes legislation, minimum mandatory sentencing, and harsh sentences for drugs. To try and deal with the overcrowding issues, and financial situations, that California found itself in due to

these policies, the Supreme Court of the United States found that California prisons were in violation of the constitution and the state would have to release almost 40,000 prisoners from its penitentiaries (California Corrections, 2011). Starting last year, the state of California started to transferring prisoners to other prisons to try and comply with the Supreme Court order. However, the ACLU argued that this was hard on prisoners as the state was often moving them far away from their families, their only support networks. Another unintended consequence of this transfer, was inmate issues arising between the state prisoners and the out-of-state prisoners in the facilities to which they were being transferred.

In addition to this, in February of 2012, a senator from California introduced bill SB-1506, which would reduce drug possession in California from a felony to a misdemeanour offense in order to help alleviate over-crowding issues in California prisons (Leno, 2012). The senator argued that not only would this help deal with the overcrowding issues, it would also save the state $159 million every year in prison operation costs for prisoners (Leno, 2012). California still has a long way to go to correct their justice system, as it will need more policy changes to start to see a reduction in prison population. The state will need to overhaul their legislation in order to start seeing a difference. There are a number of ways to go about this, such as re-modeling the three strikes legislation to be similar to that of, for example, Australia's. Instead of having the three strikes being worth life in prison, perhaps they could assign minimum mandatories under the three strikes legislation based on the crime committed. This would prevent people from getting a life sentence when their third strike is stealing a doughnut.

Another example is Texas, a state that in 2004 had the highest incarceration rate in the United States, one in twenty adults, and more than 300 death row inmates (CBC, 2011). In 2005, Texas decided it needed to drastically cut its correctional budget or face a financial crisis similar to that of California. After doing a cost benefit analysis they found that handing out probation, parole, and treatment out to offenders it was costing ten times less than sending them to prison, and it was cutting recidivism rates (CBC, 2012). Texas saw a decrease of nine percent in prison population from 2005 to 2010, and a decrease in its crime rate by twelve percent, as well as a cost reduction from $2 billion per year to just $300 million (CBC, 2012).

Judge Creuzot, from Dallas, warns Canadians that "you will spend billions on prisons, it is very expensive and you will fill them" (CBC, 2012). In Canada, the numbers agree with Creuzot, the Government of Canada has increased the prison population by doing away with the two-for-one credits in sentencing, and will now be increasing that population even more with the passage of bill C-10's mandatory minimum sentencing, and with the elimination of conditional sentences for a variety of crimes (See part 1). In addition to this, we have also seen a significant increase in correctional spending by the government of Canada. In 2005-2006 the government only spent $1.6 billion on corrections. However, the 2010 to 2011 budget was $2.98 billion, and the 2012 to 2013 budget is $3.13 billion, (or double that of 2005). (CBC, 2012).

CAN CRIME BE SOCIALLY CREATED?

None of these are new assertions, or surprising results. Schur argued, in 1969, that acts are labeled as deviant by society based on what the norms of the society are. In other words we socially create crime. The norms, or morals, from society are sanctioned as laws and these laws are then the basis of crime. When you have the morals of society dictating law, you will undoubtedly create more crime (Schur, 1969). He argues that irrational policies are to blame for the shambles of the current system. These policies were originally made in an attempt to control behaviour. In order to come up with more rational crime policy, we must first be able to come to terms with the idea that crime does not exist outside of organized society but within organized society (Schur, 1969). His idea here is that if we allow ourselves to do this we then allow ourselves to ignore that social conditions are what causes criminal emergence.

POVERTY PLAYS A ROLE

Schur argues that these tough on crime policies are only meant to divert our attention away from the real issues of society. That in America these problems consist of such issues as: America is a criminal society because it is an unequal society, war, emphasis on cultural values that help generate crime, creation of unnecessary crime

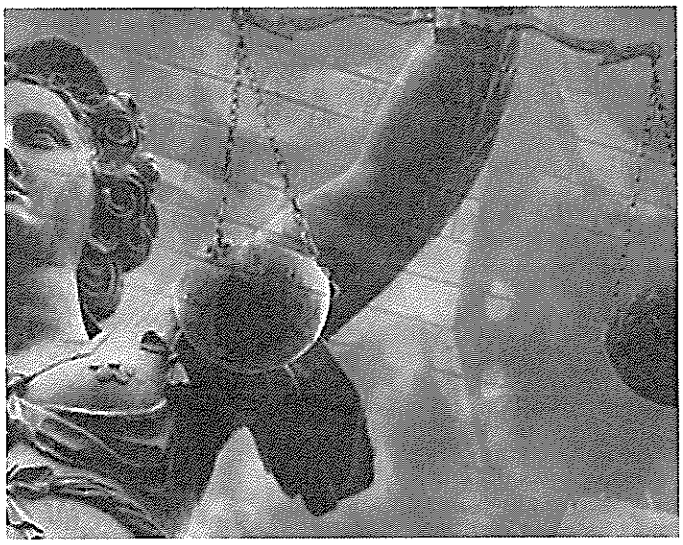
through policy, and finally America is a criminal society precisely because it has adopted an unseeing and unworkable orientation to crime problems.

While Schur's book may have been written in 1969, it is still relevant today. First, he states that "America is a criminal society because it is an unequal society" (Schur 1969, p.16). What Schur means with this statement is that violence, and crime, is not an "American tendency" it is a poverty, and lack of economic opportunity issue (Schur, 1969). If people are immersed in poverty, the social conditions that surface have a higher chance of producing criminal behaviour. Due to the type of crime usually committed due to such circumstances, it is also more visible to law enforcement allowing for the development of stereotype about the poor and crime. As a result law enforcement, and its agencies, may resort to discriminatory treatment of some minority groups who appear to be involved in more crime, when in actual fact they are just more involved in visible crime.

Although Schur was speaking about black people in his book, this issue undoubtedly applies to aboriginals in Canada. Currently aboriginals are overrepresented in Canadian prisons in large part due to the extreme impoverished situations they face, and hundreds of years of oppression. Aboriginals only represent approximately three percent of Canadians, but they make up approximately seventeen percent of the Canadian federal prison population, and in Saskatchewan aboriginals make up approximately seventy-six percent of the prison population (Parry, 2011).

DOMINANT SOCIAL VALUES MAY INADVERTENTLY HELP GENERATE CRIME

Secondly, Schur says that "America is a criminal society because of certain emphases in our cultural values that help generate crime" (1969, p.18). Meaning that in society there are certain dominant values that create such pressure to achieve that if unattainable in the legal sense some may resort to other measures to obtain (Schur, 1969). This is also a reflection of Merton's strain theory because society has objectives, and goals it pressures people



into achieving those who cannot legitimately do it must come up with other ways to achieve what society sees as success (Clinard, 1964). The theory is that people commit crime because they are striving to achieve what society wants for them but are unable to do this in a way that society would see as legitimate. If people are desperately striving for goals that they cannot attain in a legitimate manner, it is not surprising that they may result to alternative measures in order to get what society says they should have in order to be seen as successful (Clinard, 1964).

THE CREATION OF UNNECESSARY CRIME

Thirdly, "America is a criminal society because it has created much unnecessary crime" (Schur, 1969, p. 20). By this he means that criminals, and crimes are produced through over legislation. When society overreacts and creates more crime then necessary, it is not only criminalizing behaviours that should not be criminal, but potentially creating a large amount of secondary crime. The attempt by parliament to rely so heavily on sanctions in situations where such sanctions are almost certain to fail will cause extra strain on our legal system. Overcrowding of prisons, more money spent on court resources, and leaving the door open to corruption, and questionable policing practices can result in the integrity of the justice system being compromised (Schur, 1969).

TREATMENT FOR OFFENDERS

In order to prevent or deter crime, we must aim our attention away from an emphasis on law enforcement and

direct our efforts towards the treatment of offenders. Along with the treatment we should also attempt to deal with potential criminals and direct them away from crime. A prevention model of corrections should be used in order to take action against the social conditions which ultimately encourage and produce crime (Schur, 1969).

CONCLUSION

While the United States is struggling to reduce its prison population, the Canadian government says we must increase the population. It does this by proposing the following: minimum mandatory sentencing, the end of house arrests, harder-to-obtain parole, and introducing drastic changes to the way we deal with youth. Mandatory sentencing will lead to overcrowded prisons in Canada, it removes discretion from the hands of judges and places it in the hands of prosecutors, it limits the use of alternative sentencing measures, it increases the costs of prosecuting offenders, and it increases the costs of housing offenders. In other words, it will cost more money.

IS OVER LEGISLATION A SELF-FULFILLING PROPHECY?

By over legislating, the *Safer Streets and Communities Act* will punish small insignificant drug offenders, have little-to-no effect on those who are really running the drug operations in Canada, and drive the need up for new prisons. Further to this is will affect the rehabilitation of offenders, leaving them more likely to reoffend rather than leaving them less likely to reoffend, and in the meantime will have no effect on deterring criminal behaviours. And the elimination of conditional sentences means more costs for parole hearings, greater costs associated with housing those in prison, more trials, less plea bargains, and the need for more prisons in Canada.

THE U.S.A. ALSO IGNORED THE WARNINGS OF EXPERTS

As we have seen, the United States ignored warnings from criminologists as far back as the 1970s, such as Schur, and implemented tough on crime policy that resulted in devastating unintended consequences that would leave states on the verge of bankruptcy, in financial shambles, with major overcrowding issues, and high incarceration rates (such as in Texas where the incarceration rate was one in twenty adults) (CBC, 2012). Now, some 20 years later, Canada is going to implement this *Americanization of corrections* including such policies as the following: minimum mandatory sentencing, the elimination of conditional sentences, a tough on drug stance, and changes to the way the criminal justice system deals with youth. Bill C-10 seeks to deter criminal behaviour by portraying a zero-tolerance mentality and toughening up on legislation, the government is endanger of socially creating unnecessary crime. All the same mistakes that the United States is currently trying to claw their way out of. ••

ENDNOTES

What Worries Critics About Omnibus Crime Bill. (2012, March 5). CBC News.

Association, C. B. (2010). *Bill C-4 Youth Criminal Justice Act Amendments.* June 2010: National Criminal Justice Section.

Canada, G.o. (2011, September 20). Department of Justice. Retrieved from http://www.justice.gc.ca/eng/news-nouv/nr-cp/2011/doc_32632.html

Chase, S. (2011, September 20). *Sweeping Conservatice Crime Bill Only the Beginning.* Globe and Mail

Clinard, M. (1964). *Anomie and Deviant Behaviour.* Toronto: Collier-Macmillian Canada.

Fitzpatrick, M. (2011, October 6). *Crime Bill to Cost 78M Over 5 Years.* CBC News.

Goeff, C. (2011). *Criminal Justice in Canada 5th Edition.* New York: Nelson.

Griffiths, C. T. (2010). *Canadian Corrections 3rd edition.* Toronto: Nelson.

Leno, M. (2012, Febuary 27). *Mark Leno Representing Senate District 3.* Retrieved from http://sd03.senate.ca.gov/news/2012-02-27-leno-bill-revises-penalty-simple-drug-possession

Liptak, A. (2011, May 23). *Justices, 5-4, Tell California to Cut Prisoner Population.* New York Times.

Milewski, T. (2011, October 17). *Texas Conservatives Reject Harpe's Crime Plan.* CBC News.

Perry, B. (2011). *Diversity, Crime, and Justice in Canada.* New York: Oxford University.

Rehabilitation, C. D. (2011). *Three-Judge Panel and California Inmate Population Reduction.* State of California.

Ritzer, G. (1992). *Classical Sociological Theory.* United States: McGraw Hill.

Roche, D. (1999). *Mandatory Sentencing.* Australian Institute of Criminology Trends and Issues, 1-6.

Schur, E. (1969).Our Criminal Society: The social and legal sources of Crime in America. United States: Prentice-Hall.

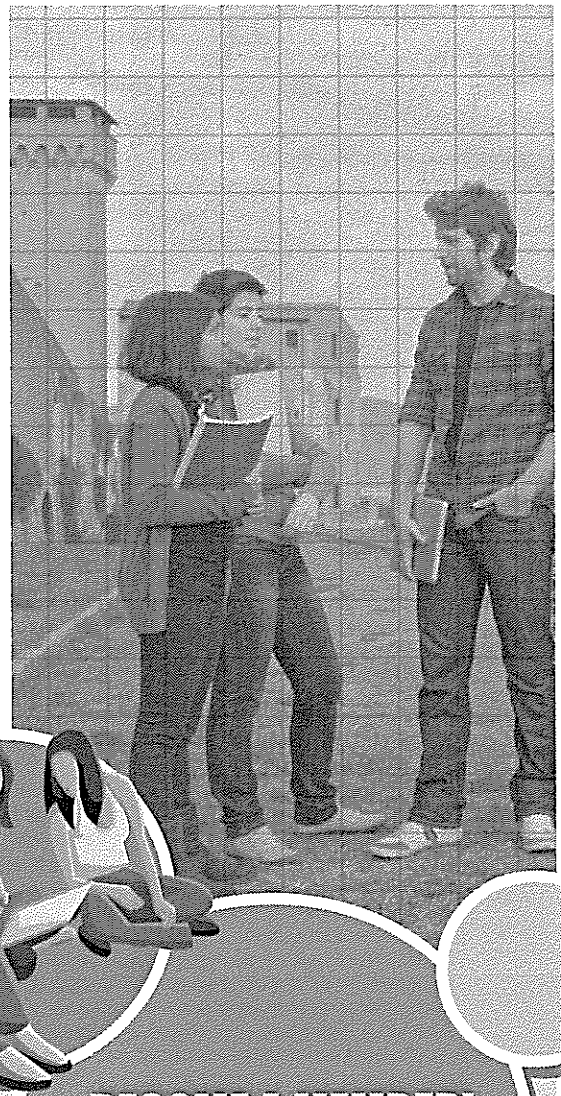
Sterling, E. (2011, Febuary 29). *Canada is Repeating US Mistakes on Drug Sentencing.* Ottawa Citizen.

Sterling, E. (2011). *Interview with Eric Sterlin .* (PBS, Interviewer).

Tonry, M. (1991). *Mandatory Minimum Penalties and the US Sentencing Commissions "Mandatory Guidelines".* Federal sentencing Reporter, 129-133.

White, R., Haines, F., & Eisler, L. (2009). *Crime and Criminology.* Toronto: University Press.

La partie I de cet article (Actualités-Justice, no 27-3) traitait du processus d'américanisation du système canadien de justice pénale. MacInnis se penchait alors sur l'historique du châtiment comme mesure dissuasive ainsi que sur le passage d'un système de justice axé sur le châtiment à un système axé sur la réinsertion sociale et le virage plus récent encore vers une justice vengeresse. La partie II examine les changements découlant de la Loi sur le système de justice pénale pour les adolescents, qui inclut maintenant des comportements insouciants dans la nouvelle définition d'« infraction avec violence », qui facilite la détention de jeunes personnes ayant commis un crime contre les biens et qui permet dorénavant de publier les noms de jeunes contrevenants accusés de crimes avec violence. La partie II se penche enfin sur le recours exagéré aux lois, un phénomène en vertu duquel la criminalité est générée par la société par le biais de principes plus sévères de détermination de la peine.



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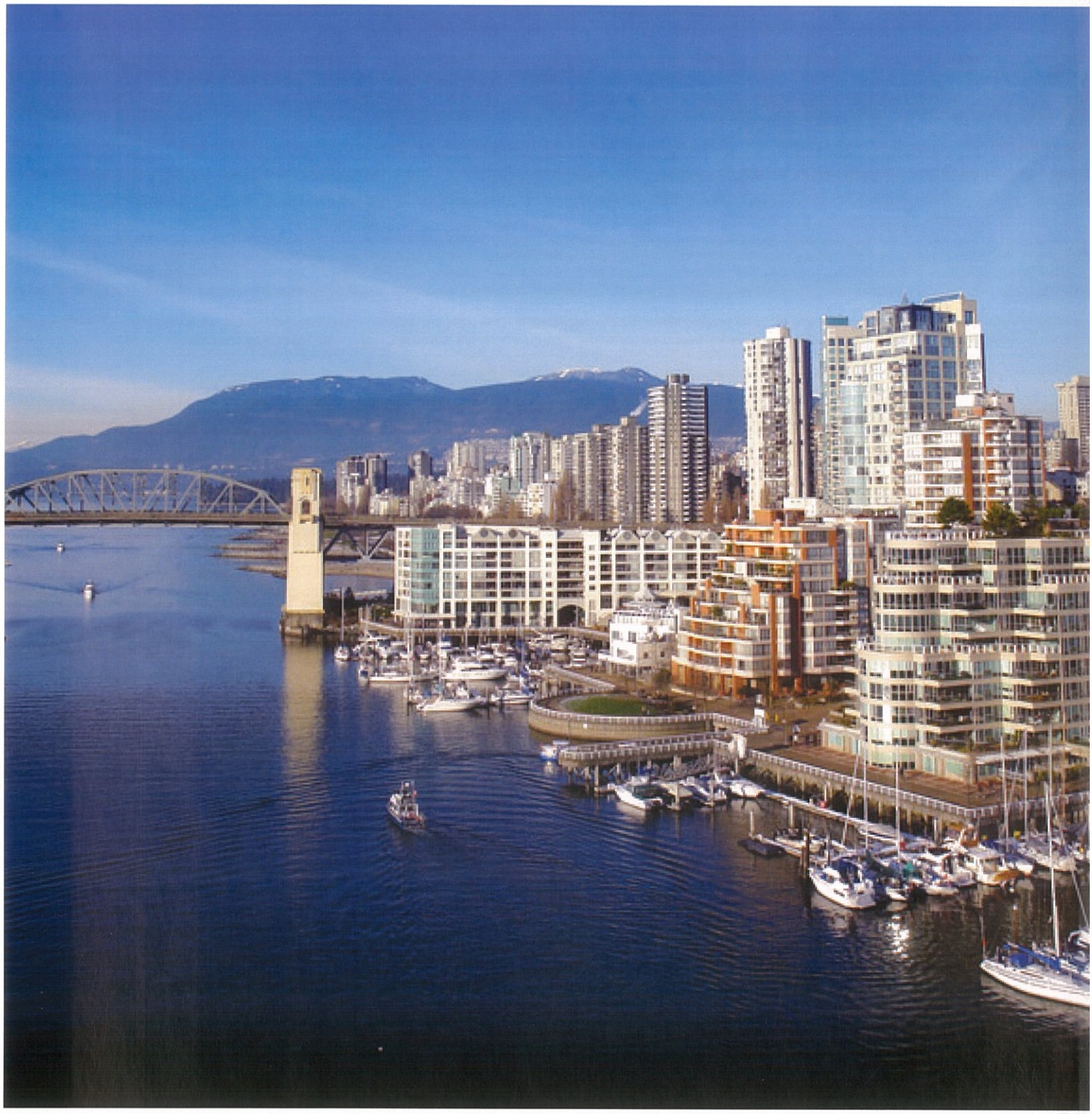

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